

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CANDICE D’CUNHA

**Plaintiff,**

v.

NORTHWELL HEALTH SYSTEMS

**Defendant**

AMENDED COMPLAINT  
FOR DECLARATOR  
AND INJUNCTIVE RELIEF

Civil Action No. 1:22-cv-988

**AMENDED COMPLAINT**

**INTRODUCTION**

1. Candice D’Cunha was a resident at Northwell Health Systems Staten Island University Hospital. There she worked since the summer of 2020, receiving stellar performance reviews throughout her time at Northwell. She worked through much of the COVID-19 pandemic, even catching COVID herself with an infant at home.

2. Despite this hard work, dedication, and sacrifice on behalf of Northwell Health Systems and its patients, Northwell Health Systems fired Dr. D’Cunha in October of last year while she was four months pregnant.

3. This was not because of poor performance as an employee or as a doctor; it was not

because Northwell found that she was sick or presented an actual threat to her patients or co-workers in any way. It was because Northwell insisted that Dr. D’Cunha take a vaccine that she could not accept as a matter of concern for her unborn child and her conscience, medical training, common sense, and religious beliefs.

4. In seeking to exert economic pressure on the question of whether she would accept medical treatment, Northwell Health Systems abandoned its commitment to the fundamentals medical ethics—the principal of informed consent in particular.

5. In refusing to accommodate Dr. D’Cunha’s pregnancy, religious beliefs, and medical condition, Northwell also violated state and federal law.

#### **JURISDICTION AND VENUE**

6. Plaintiff seeks relief pursuant to the civil enforcement provisions of the Pregnancy Discrimination Act and the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and the Americans with Disabilities Act, 42 U.S.C. § 12101.

7. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1343(a)(3)-(4) because this action arises under the laws of the United States.

8. Venue for this action properly lies in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events, actions, or omissions giving rise to the claim occurred in this judicial district, where Northwell Health Systems Staten Island Staten Island University Hospital is principally located.

9. This Court may also issue declaratory relief pursuant to 28 U.S.C. § 2201. Additionally, “[f]urther necessary or proper relief based on a declaratory judgment may [also] be granted ...,” including via injunction. *See Powell v. McCormack*, 395 U.S. 486, 499 (1969) (“A

declaratory judgment can then be used as a predicate to further relief, including an injunction. 28 U.S.C. § 2202 ....”).

10. This Court also has concurrent jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

### **PARTIES**

11. Plaintiff Candice D’Cunha is a 2020 graduate of Kent State University College of Podiatric Medicine. She Matched in January 2020 with Staten Island University Hospital Northwell for her residency and began work there in June of 2020.

12. Northwell Health Systems is a New York domestic not-for-profit corporation headquartered in Westbury, Nassau County, New York. Northwell is the parent company of Staten Island University Hospital, located in Staten Island, where Dr. D’Cunha worked. Northwell Health Systems is the largest health provider in New York.<sup>1</sup>

### **FACTUAL BACKGROUND**

13. Dr. D’Cunha lived in New York City upon arriving in the United States in August of 2008. She received an education there and worked her way into medical school at Kent State

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<sup>1</sup> See, e.g., Brian Rosenthal, *The largest hospital system in New York sued 2,500 patients for unpaid medical bills after the pandemic hit.*, NEW YORK TIMES, (January 6, 2021), available at <https://www.nytimes.com/2021/01/06/world/the-largest-hospital-system-in-new-york-sued-2500-patients-for-unpaid-medical-bills-after-the-pandemic-hit.html?auth=login-email&login=email> (last accessed February 3, 2022)(“When the coronavirus began spreading through New York, Gov. Andrew M. Cuomo ordered state-run hospitals to stop suing patients over unpaid medical bills, and almost all of the major private hospitals in the state voluntarily followed suit by suspending their claims. But Northwell Health, which is the state’s largest health system and is run by one of Mr. Cuomo’s closest allies, sued more than 2,500 patients last year, records show.”)

University College of Podiatric Medicine.

14. During medical school at Kent State, then, an externship in the City was a natural choice. She accepted an offer of an externship at Staten Island University Hospital (“SIUH” or “SIUH Northwell”) and worked there in August of 2019.

15. Dr. D’Cunha then interviewed for her residency at SIUH in January of 2020, and applied in February 2020.

16. SIUH Northwell informed Dr. D’Cunha that she matched for a residency in March, 2020.

17. Dr. D’Cunha graduated in May of 2020 and began her residency at SIUH Northwell on June 22, 2020.

18. Dr. D’Cunha progressed nicely throughout her residency and received good reviews.

19. Dr. D’Cunha was pregnant when she began her residency and gave birth to her daughter in October of 2020.

20. In February of 2021, Dr. D’Cunha started experiencing symptoms consistent with COVID-19, which a positive test confirmed.

21. As a result, Dr. D’Cunha missed roughly ten days of work while she recovered in the February-March 2021 timeframe. She had vertigo symptoms that continued for an additional six weeks.

22. On August 2, 2021, SIUH Northwell announced a mandate that its employees must receive a COVID-19 vaccine or receive a religious or medical exemption by September 27, 2021, or face termination.

23. Northwell never published any criteria by which it would grant religious exemptions

to its mandate.

24. Upon information and belief, Northwell never published any criteria by which it would grant medical exemptions.

25. Upon information and belief, Northwell never *established* any criteria by which it would grant medical exemptions.

26. On September 3, 2021, Dr. D'Cunha submitted a request for a religious exemption. (See Exhibit A.)

27. On September 4, 2021, Northwell verbally informed Dr. D'Cunha that they were no longer accepting any religious exemption requests.

28. On September 9, 2021, Dr. D'Cunha submitted a request for a medical exemption. (See Exhibit B.)

29. On September 20, 2021, Northwell informed Dr. D'Cunha that they had denied her request for medical exemption. (See Exhibit C.)

30. On September 23, 2021, Dr. D'Cunha appealed Northwell's decision on her medical exemption request.

31. On September 29, 2021, Northwell informed Dr. D'Cunha that it rejected the appeal of her medical exemption request. (See Exhibit D.)

32. On September 30, 2021, Kate Rafla, Northwell Director of Operations at SIUH, contacted Dr. D'Cunha to inform her that Northwell could not locate her request for religious exemption. (See Exhibit E.)

33. Dr. D'Cunha re-submitted her request for religious exemption the same day.

34. On October 1, 2021, Northwell informed Dr. D'Cunha that it had rejected her request for religious exemption in which it referenced a stay on New York state's mandate and stated in

relevant part:

in an effort to provide clarity to you while we await the court's final determination and in an effort to address its operational concerns...In accord with the principles that would apply should such religious exemptions be permitted, we nevertheless have determined that your religious exemption request must be denied as it would create an undue hardship. (See Exhibit F.)

35. On October 1, 2021, while she was seeing patients, Northwell summoned Dr. D'Cunha and hand-delivered her a letter of termination back-dated to September 28. (See Exhibit G.)

36. Later that day, Amy Durante, Northwell Director of Medical Education, informed Dr. D'Cunha that, as a resident, she was entitled to a delayed termination date and an appeals process. She followed up with a letter to this effect dated October 5, 2021. (See Exhibit H.)

37. On October 8, Northwell provided Dr. D'Cunha with a second termination letter stating that October 7 had been her last day of work. (See Exhibit I.)

38. Dr. D'Cunha requested an appeal, and on November 22, 2021, participated in an internal hearing of Northwell's Adverse Action Review Committee that Northwell conducted to review its termination. (See Exhibit J.)

39. On Christmas Eve, December 24, 2021, Northwell delivered to Dr. D'Cunha the decision of the Adverse Action Review Committee that it stood by its decision to terminate her. (See Exhibit K.)

40. Northwell did not reach an independent determination that Dr. D'Cunha posed an increased health threat to any of her patients or co-workers that necessitated the steps it took.

41. Northwell never made an independent determination that Dr. D'Cunha posed an increased health threat to any of her patients or co-workers as a result of not having taken the COVID-19 vaccine.

42. Dr. D’Cunha filed a complaint with the Equal Employment Opportunity Commission (EEOC), charge number 520-2022-00721.

43. The EEOC issued a *Notice of Right to Sue* on November 5, 2021. (See Exhibit L.)

44. Upon information and belief, Northwell granted exemptions to several of its employees in order to accommodate their religious beliefs.

45. Upon information and belief, Northwell granted exemptions to several of its employees to accommodate their pregnancies.

46. Upon information and belief, Northwell granted exemptions to several of its employees to accommodate their medical conditions.

47. Northwell made no attempt to accommodate Dr. D’Cunha’s pregnancy, medical condition, or religious beliefs.

48. Northwell made no showing that any such accommodation would present an undue hardship.

49. Dr. D’Cunha remains unemployed.

### **COUNT ONE**

#### **Discrimination on the basis of sex.**

50. Paragraphs 13-51 are incorporated herein.

51. The Civil Rights Act of 1964, 42 U.S.C 2000e-2(a)(1) prohibits discrimination on the basis of sex.

52. In 1978, Congress Amended the Civil Rights Act, defining “sex” to include “pregnancy, childbirth, or related medical conditions.”

53. In refusing to accommodate Dr. D’Cunha’s request for exemption because of her

pregnancy and firing her, Northwell discriminated against her on the basis of sex.

**COUNT TWO**  
**Discrimination on the basis of religion.**

54. Paragraphs 13-51 are incorporated herein.

55. The Civil Rights Act of 1964, 42 U.S.C 2000e-2(a)(1) prohibits discrimination on the basis of religion.

56. In refusing to accommodate Dr. D’Cunha’s request for exemption because of her religious beliefs and firing her, Northwell discriminated against her on the basis of religion.

**COUNT 3**  
**Discrimination on the basis of perceived disability.**

57. Paragraphs 13-51 are incorporated herein.

58. The Americans with Disabilities Act, 42 U.S.C. 12101 prohibits discrimination on the basis of disability.

59. These protections include situations when the employee is “regarded as having such an impairment.” 42 U.S.C. §12102(1)(c).

60. In refusing to accommodate Dr. D’Cunha’s request for a medical exemption and firing her, Northwell discriminated against her on the basis of perceived disability—that, despite providing a laboratory-confirmed antibody count, she was impaired in her immunity to the disease, and is a carrier or potential carrier of an infectious disease.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for relief as follows:

- A. Hold unlawful and set aside Northwell’s vaccine mandate.
- B. Issue permanent injunctive relief enjoining Defendant Northwell and its agents from



failing to accommodate Dr. D'Cunha and terminating her and reinstate her to full employment status.

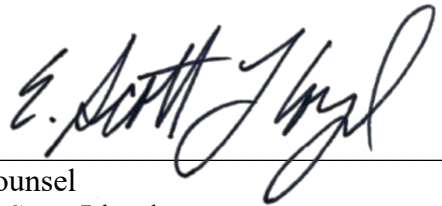
C. Award compensatory and punitive damages to Dr. D'Cunha for loss of employment and costs incurred as a result of her loss of her residency, including losses related to the delay in the progress of her career.

D. Award Plaintiff costs and reasonable attorneys' fees.

E. Award such other and further relief as the Court deems equitable and just under the circumstances.

Dated: February 24, 2022

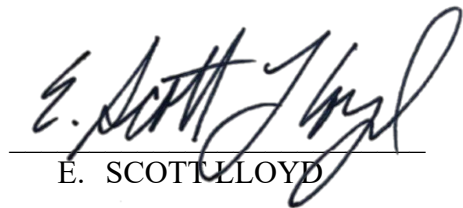
Respectfully Submitted,

A handwritten signature in black ink, appearing to read "E. Scott Lloyd", is written over a horizontal line.

Counsel  
E. Scott Lloyd  
Law Office of E. Scott Lloyd, PLLC  
Virginia Bar # 76989  
20 E. 8<sup>th</sup> Street, Suite 3  
Front Royal, VA 22630  
(540)631-4081  
[scott@law-esl.com](mailto:scott@law-esl.com)  
Counsel for the Plaintiff  
\*Admitted *pro hac vice*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I will cause a copy of the foregoing Complaint to be served upon Defendant on February 25, 2022.



E. SCOTTLLOYD

**VERIFICATION**

Pursuant to 28 U.S.C. § 1746, I, Candice D'Cunha, declare under penalty of perjury that the foregoing is true and correct. Executed on February 24, 2022.



CANDICE D'CUNHA

**EXHIBIT A**

## COVID-19 Vaccination – Religious Accommodation Request Form

Please complete this form to submit a request for a religious exemption from the New York State (NYS) COVID-19 Vaccination Requirement and submit it to your Site Human Resources Department no later than September 3, 2021.

Name: Candice D'Cunha Phone: [REDACTED]

Email: [REDACTED]@northwell.edu Person ID Number: \_\_\_\_\_

Work Location/Facility: SIUH North & South Job title: Resident Physician - PGY2

Department Name: Podiatry Manager's name: Brigitte McLaughlin

## Team Member Acknowledgment:

By completing this form, I am requesting an accommodation in the form of an exemption from the NYS COVID-19 vaccination requirement because I have a genuine and sincere religious belief contrary to the practice of immunization. My objections to vaccinations are not based solely on grounds of personal philosophy or inconvenience. *When the producers of the vaccines used for that immunization use tissue, cells, DNA or other organic materials derived from aborted human fetuses in the research, development and/or production of that vaccine."* I understand that NYS requires all healthcare workers to receive their first COVID-19 vaccine by September 27, 2021 and complete the vaccination series as outlined by the manufacturer and that my request for an accommodation may be denied if it would create an undue hardship for Northwell Health, which includes but is not limited to an impairment to workplace safety or a burden to business operations. I understand that if my accommodation request is denied, I will be required to become fully vaccinated to continue my employment at Northwell Health.

Please describe the reason for your religious accommodation request, including a statement of how your particular sincerely-held religious belief, practice, or observance relates to your requested accommodation and why your requested accommodation is necessary. Please provide as much detail as possible, including any supporting documentation, that may be relevant to your request.

I understand all of the foregoing to reference and to be in accord with current state and federal law regarding discrimination on the basis of religion, and reasonable accommodation of religious practice in the workplace. I do not, by signing this document, consent to any other standard other than the protections afforded to me under state and federal law, and I do not, by signing this document, agree to waive any protection against discrimination on the basis of religious belief, moral conviction, or any other protected status, nor do I waive any guarantee of equal protection, reasonable accommodation, or any other protection afforded to me under the law.

I understand that Northwell Health may request additional supporting documentation or information regarding my sincerely-held religious belief, practice, or observance.

*All information provided as part of the accommodation request process will be kept as confidential as possible.*

**Please submit this completed form to your Site Human Resources Department.** Because of New York State's September 27 vaccine requirement for health care workers, team members will not be permitted to work beyond that date unless they are either vaccinated or have an approved exemption.

For that reason, we are strongly encouraging all team members to submit their forms no later than September 3. Any forms submitted after September 3 will still be reviewed, but in order to comply with the State's regulatory requirement, team members submitting forms after September 3 may be placed on unpaid administrative leave as of September 27<sup>th</sup> if they are unvaccinated and their request is still being reviewed on that date.

You will be contacted by a member of the Human Resources team to review your request and to advise if further information is required. You will be notified if your request has been approved or not approved.

For questions about this process, please reach out to your Site Human Resources department.

**Team Member signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

09/3/2021

I, Candice D'Cunha, request an exemption from the COVID-19 Northwell Health vaccine requirement. I am a lifelong practicing Roman Catholic, and my genuine and sincere religious beliefs are contrary to the practices which are herein required of me.

As a practicing Roman Catholic, I believe and my religion instructs me that abortion violates the very basic commands found in Exodus 20:13 and Deuteronomy 5:17 ("You shall not kill") which instructs us to not murder. All three vaccines currently available for the treatment of COVID-19 involve the use of cell lines derived from aborted fetuses.<sup>1</sup>

I also object to, and seek to avoid, all other vaccines which involve the practice of abortion either directly or indirectly. Supporting vaccinations and vaccination development involving aborted fetal cells is an endorsement of the sacrifice of those and the continuing sacrifice of other human souls. Genesis 4:1, 17 and Jeremiah 1:5 demonstrate that the deceased children used in the aforementioned vaccinations were recognized by God as human souls from the point of conception in the same way that we, as parents, recognized our child as a human from the moment we were aware of his/her presence in his/her mother's wombs. Genesis 1:27 - 28, 4:1, 2 Kings 17:17-18, Psalm 22:10-11, 106: 35, 37-38, 113:7-9, 127:3, 139:13-16, Amos 1:13, Matthew 18:1-4, and Matthew 19:13-15 are just a few verses that illustrate the aforementioned children as blessings from God that are valued and loved by him, their Creator, in whose image they were created and that their killing is condemned and causes God's destructive anger to burn against their murderers and those complicit in those murders. Exodus 20:13, Leviticus 18:21 & 20:2-5, Deuteronomy 5:13, 12:30-32, 18:10, 2 Kings 16:3, and Psalm 106:38 illustrate that all child sacrifice is condemned with no exception clauses allowing for the greater good or public exception clauses found anywhere in the sacred scriptures, Catholic Tradition, or the teaching authority of the Catholic Church. As the Catechism of the Catholic Church section 1782 states, "Man has the right to act in conscience and in freedom so as personally to make moral decisions. 'He must not be forced to act contrary to his

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<sup>1</sup> See, e.g., Fred Guterl, *COVID-19 Vaccines and Fetal Tissue: The Science and Controversy Explained*, NEWSWEEK, March 21, 2021, at <https://www.newsweek.com/covid-19-vaccines-fetal-tissue-science-controversy-explained-1575863>. ("Fetal-cell lines played a vital role in the development of all three vaccines. Moderna and Pfizer used Van der Eb's original cell line, called HEK 293, in the testing of their coronavirus vaccines—that is, scientists first developed the vaccines using their mRNA technologies and subsequently tested them on lab-cultured HEK 293 cells, ancestors of the original cells that Van der Eb took from an embryo almost 50 years ago. Johnson & Johnson used a different fetal-cell line, called PER.C6, that was cultured in Van der Eb's lab in 1995. While Moderna and Pfizer used fetal cells for testing their vaccine after it was already produced, J&J used fetal cells as tiny "factories" that produced the active ingredient in its vaccine.")

conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters."

Inasmuch as my sincerely held beliefs would be violated by taking a COVID vaccine for the aforementioned reasons, there is legal precedent that upholds and defends my right to Religious Exemption in this context. Therefore, I request that you uphold my genuine and sincerely held religious beliefs.

Sincerely,

Candice D'Cunha, DPM, PGY-2

**EXHIBIT B**



## COVID-19 Vaccination – Medical Accommodation Request Form

Please complete this form and provide the supporting medical documentation described on page 2 of this form to submit a request for a medical exemption from the New York State (NYS) COVID-19 Vaccination Requirement. Submit all forms and supporting documents to [ehscompliance@northwell.edu](mailto:ehscompliance@northwell.edu) no later than September 3, 2021.

Name: Candice D'Cunha Phone: [REDACTED]  
 Email: [REDACTED]@northwell.edu Person ID Number: \_\_\_\_\_  
 Work Location/Facility: \_\_\_\_\_ Job Title: Resident Physician - P4Y2  
 Department Name: Podiatry Manager's name: Dr. Sottile

## Required Supporting Documentation:

When returning this form, please include the required supporting medical documentation/information shown on page two (2). These documents must be provided and certified by a physician, physician assistant or nurse practitioner who is licensed to practice in the United States, and who is not related to you. For licensed practitioners, the certification may not be signed by yourself or a licensed practitioner from your practice. If this documentation is not provided upon initial submission, it will be requested prior to completing the review. Northwell Health may be unable to complete the review of an accommodation request if the required supporting medical documentation is not provided.

This request will be approved or denied after review by a Northwell Health clinical committee.

## Team Member Acknowledgment:

By completing this form, I am requesting an accommodation in the form of a medical exemption from NYS COVID-19 Vaccination Requirement.

I understand that NYS requires all healthcare workers to receive their first dose of a COVID-19 vaccine by **September 27, 2021** and complete the vaccination series as outlined by the manufacturer and that my request for an accommodation may be denied if providing me a medical exemption would pose a direct threat to myself or others in the workplace or would create an undue hardship for Northwell Health. I understand that if the request is denied I will be required to become fully vaccinated to continue my employment at Northwell Health.

*I understand all of the foregoing to reference and to be in accord with current state and federal law regarding discrimination on the basis of pregnancy and/or disability, and reasonable accommodation of both in the workplace.*

You will be notified if the exemption request has been approved or not approved. If approved, the exemption will remain in effect for so long as your medical provider indicates that your health condition prevents you from receiving the COVID-19 vaccine and so long as the exemption continues to meet Northwell Health's criteria and standards for approval. You must also agree to adhere to all safety requirements set forth by Northwell Health for unvaccinated team members.

For questions about this process, please reach out to your Site Human Resources department.

Team Member signature: [REDACTED]

Date: 9/9/2021

I do not, by signing this document, consent to any other standard

other than the protections afforded to me under state and federal law, and I do not

by signing this document, agree to waive any protection against discrimination on pregnancy,

disability, or any other protected status, nor do I waive any guarantee of equal protection, reasonable accommodation, or any other protection afforded to me under the law. *CP*



## Obstetrics and Gynecology at Staten Island

1145 Targee Street, Suite 2  
Staten Island, NY 10304  
(718) 979-5887

Patient: DCUNHA, CANDICE

Age/Sex/DOB:

EMRN:

OMRN:

Home:

Work:

### Results

Lab Accession # 5250409205

Ordering Provider: LAPORTA, CHRISTOPHER

Performing Location: NSLIJ Core Lab (Med Director: Dwayne A. Breining M.D)  
450 Lakeville Road  
Lake Success, NY 11042

Collected: 08/03/2021 3:20:00PM

Resulted: 08/04/2021 2:39:00AM

Verified By: LAPORTA, CHRISTOPHER

Auto Verify: N

#### COVID-19 Spike Domain Antibody

Stage: Final

<u>Test</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Reference Range</u>
COVID-19 Spike Domain Antibody	>250.00	U/mL	H	<=0.79
Roche ECLIA Total AB (GAM)				
NOTE: This result index represents a total antibody measurement, which includes IgG, IgA and IgM.				
Measures Receptor Binding Domain of the Spike Protein				
Negative <= 0.79 U/mL				
Positive >= 0.80 U/mL				

COVID-19 Spike Domain Antibody Interpretation Positive A Negative

This test has been authorized for emergency use by the FDA. Northwell Health Laboratories has validated this test to be accurate. Results from antibody testing should not be used to inform infection status.

A positive result is consistent with vaccination, prior infection, or rarely be due to past or present infection with non-SARS-CoV-2 coronavirus strains, such as coronavirus HKU1, NL63, OC43, A3 or 229E.

A negative result does not rule out SARS-CoV-2 infection, particularly in those who have been in recent contact with the virus.





# Staten Island University Hospital

Northwell Health

Christopher LaPorta, MD  
1145 Targee Street  
Staten Island, NY 10304

To whom it may concern,

Candice Dcunha, DOB [REDACTED] is currently under my care for current pregnancy EDC 3/6/22. She currently resides at 236 Graves Ave. S.I. 10314; Covid antibodies on 8/3/21 > 250. Request delaying vaccine administration to after delivery. I attest that I am not related to this patient. Thank you for your consideration in this matter.

Sincerely,

Dr. Christopher Laporta license # 199593

A handwritten signature in black ink, appearing to be 'C. LaPorta', written over a horizontal line.

Christopher LaPorta, MD  
1145 Targee Street  
Staten Island, NY 10304

9/2/21



**Caruso, Milissa**

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**From:** Dcunha, Candice  
**Sent:** Thursday, September 23, 2021 6:49 AM  
**To:** EHS Compliance  
**Subject:** medical exemption appeal  
**Attachments:** DCunha Doctor Letter (1).pdf; Antibody Test Range.pdf; Breastfeeding and vaccine.pdf

Hello EHS,

I recently was in receipt of your rejection of my medical exemption request. I provided a letter from my Obstetrician regarding my current pregnancy. I also provided my antibody results test from having a prior covid infection earlier this year. As stated in my lab results, my antibody levels are at the maximum level they should be. Your decision to reject my medical exemption is extremely disappointing. I worked as a resident this past year while pregnant with my first child, and I contracted covid-19 three months postpartum, all while there was no effort made by the hospital for covid testing to ensure our safety. But now that a vaccine is available, we must test every week when the number of covid patients in-house are at its lowest. Please do explain.

At this time, after having received training in medicine, I am at a loss for how a level of antibodies that is at its maximum would benefit from a vaccine. How can something that is at its maximum range get any higher? Please do provide an explanation.

Research has shown that getting a vaccine is redundant for those who have already been infected with Covid-19 and have high antibody levels. I have some articles listed below for your reference:

<https://www.medrxiv.org/content/10.1101/2021.06.01.21258176v2>["Individuals who have had SARS-CoV-2 infection are unlikely to benefit from COVID-19 vaccination." "COVID-19 did not occur in anyone over the five months of the study among 2579 individuals previously infected with COVID-19"]

<https://medicine.wustl.edu/news/good-news-mild-covid-19-induces-lasting-antibody-protection/> ["The findings, published May 24 in the journal Nature, suggest that mild cases of COVID-19 leave those infected with lasting antibody protection and that repeated bouts of illness are likely to be uncommon"]

<https://www.nydailynews.com/coronavirus/ny-covid-delta-variant-pfizer-protection-past-case-20210827-kbyqgipsyvc5rfzq6k4tdfejga-story.html>["The largest real-world analysis comparing natural immunity and the protection provided by coronavirus vaccines revealed those who have received both jabs of Pfizer's two-stick shot were almost six-fold more likely to contract a delta infection and seven-fold more likely to show symptoms and become hospitalized than those who have already recovered from COVID"]

I have listed an article, and attached an article to this email with regards to lack in data specifically in pregnant women, lactating women, and their newborns: <https://www.nih.gov/news-events/news-releases/nih-begins-study-covid-19-vaccination-during-pregnancy-postpartum> ["Participants and their infants will be followed through the first year after delivery. To assess the development and durability of vaccine-induced antibodies overall and by vaccine type and vaccine platform, researchers will analyze blood samples collected from pregnant and postpartum participants."]

The final article I am attaching is regarding a preliminary study on pregnant women who have received the covid vaccine. <https://www.nejm.org/doi/full/10.1056/nejmoa2104983> ["Among 827 participants who had a completed pregnancy, the pregnancy resulted in a live birth in 712 (86.1%), in a spontaneous abortion in 104 (12.6%), in stillbirth in 1 (0.1%), and in other outcomes (induced abortion and ectopic pregnancy) in 10 (1.2%)"]

Based on the above-mentioned studies, pregnancy seems like a strong contraindication to getting the vaccine.

Once again, I reiterate, by accepting a vaccine that I do not need due to natural immunity, I would be putting my unborn child at risk of death. I am not at risk of losing my child currently but getting the vaccine would put me at risk.

I am assuming there is a physician(s) reviewing my medical exemption request. You mentioned in your letter to me that my "stated reason for a medical exemption is not a contraindication to COVID-19 vaccination." This is a statement with inherent medical implications, made by unknown persons. Please do provide the name and license number of the physician assuming liability for myself and my unborn, developing child who is assuming there are no risks to either my unborn child or myself if I were to get the covid-19 vaccine.

I hope you will reconsider my appeal because at present you are forcing a pregnant mother to choose between the safety of her unborn child and her income and training. **I took care of your patients. Will you take care of your pregnant employee?**

I look forward to your response,  
Candice D'Cunha, DPM, PGY2





# FollowMyHealth<sup>®</sup>

Name: CANDICE P DCUNHA DCUNHA  
 Date of Birth: [REDACTED]  
 Gender Identity: Female

## Results

**Order:** COVID-19 Spike Domain Antibody

<u>Name</u>	<u>Date</u>	<u>Value</u>	<u>Units</u>	<u>Range</u>	<u>Source</u>
COVIDSAB	8/4/2021	>250.00	U/mL	<=0.79	Northwell Health Clinic Labs

**Notes:**

Roche ECLIA Total AB (GAM)

NOTE: This result index represents a total antibody measurement, which includes IgG, IgA and IgM.

Measures Receptor Binding Domain of the Spike Protein

Negative <= 0.79 U/mL

Positive >= 0.80 U/mL

**DISCLAIMER:** This information is supplied from the patient's medical record via a patient portal. The medical provider is listed as the source. Items with a source of 'Patient-Entered' were added by the patient. This record may not be complete or up to date, and should not be used for providing medical advice. For an official copy of the

individual's medical record, the patient (or custodian) must contact their medical provider.

Generated on 08/27/2021 11:58:20 AM by FollowMyHealth®  
(<http://www.followmyhealth.com>).



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## ABM STATEMENT

### Considerations for COVID-19 Vaccination in Lactation

December 14, 2020 - Several countries have recently issued an emergency use authorization (EUA) for the Pfizer/BioNtech mRNA COVID-19 vaccine. A second mRNA COVID vaccine, manufactured by Moderna, will be reviewed in the coming weeks. Since these two vaccines are similar, the information in this document can be applied to both vaccines.

Although there is currently no clinical data on use of COVID-19 mRNA vaccines in lactation, the [United States Food and Drug administration EUA](#) left open the possibility of administering the vaccine to both pregnant and lactating individuals.

Many lactating individuals fall into categories prioritized for vaccination, such as front-line health care workers. The Academy of Breastfeeding Medicine does not recommend cessation of breastfeeding for individuals who are vaccinated against COVID-19. Individuals who are lactating should discuss the risks and benefits of vaccination with their health care provider, within the context of their risk of contracting COVID-19 and of developing severe disease. Health care providers should use shared decision making in discussing the benefits of the vaccine for preventing COVID-19 and its complications, the risks to mother and child of cessation of breastfeeding, and the biological plausibility of vaccine risks and benefits to the breastfed child.

These conversations are challenging, because the Pfizer/BioNtech vaccine trial excluded lactating individuals. As a result, there are no clinical data regarding the safety of this vaccine in nursing mothers. However, there is little biological plausibility that the vaccine will cause harm, and antibodies to SARS-CoV-2 in milk may protect the breastfeeding child.

The vaccine is made of lipid nanoparticles that contain mRNA for the SARS-CoV-2 spike protein; the mRNA sequence only encodes this protein. These particles are injected into muscle, where the nanoparticles are taken up by muscle cells. These muscle cells then transcribe the mRNA to produce spike protein. The spike protein made by the cell stimulates an immune response, protecting the individual from COVID-19 illness.

During lactation, it is unlikely that the vaccine lipid would enter the blood stream and reach breast tissue. If it does, it is even less likely that either the intact nanoparticle or mRNA transfer into milk. In the unlikely event that mRNA is present in milk, it would be expected to be digested by the child and would be unlikely to have any biological effects.

While there is little plausible risk for the child, there is a biologically plausible benefit. Antibodies and T-cells stimulated by the vaccine may passively transfer into milk. Following vaccination against other viruses, IgA antibodies are detectable in milk within 5 to 7 days. Antibodies transferred into milk may therefore protect the infant from infection with SARS-CoV-2.

Although the biology is reassuring, for definitive information, we will have to wait for data on outcomes once the vaccine is used in lactating individuals and their children.

According to the [CDC Advisory Committee on Immunization Practices](#), with the exception of small pox and yellow fever, vaccines during lactation do not affect the safety of breastfeeding for the mother or her child.

The ABM urges vaccine manufacturers to include data for lactating individuals and their children in periodic safety reports. Furthermore, we strongly recommend that future research studies routinely include pregnant and lactating participants. We must protect pregnant and breastfeeding people through research, not from research.

Japanese Translation



## CONTACT US



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**EXHIBIT C**



**Personal and Confidential**

September 20, 2021

Sent Via: Electronic Mail

Candice Dcunha

Email Address: [REDACTED]@northwell.edu

**Re: Accommodation Status**

Dear Candice Dcunha:

We are in receipt of your request for a medical exemption from New York State's mandate that requires all personnel employed or affiliated with a health care facility to receive their first dose of the COVID-19 vaccine by September 27, 2021. In August 2021, the New York State Department of Health ("DOH") issued this vaccine mandate under Section 16 of the Public Health Law. After reviewing your request and supporting materials, we are unable to grant you a medical exemption from the NYS vaccine mandate. Exemption decisions are based on known COVID-19 vaccine safety risks. Your stated reason for a medical exemption is not a contraindication to COVID-19 vaccination. This means that in accordance with the NYS vaccination mandate, you must receive your first dose of the COVID-19 vaccine by September 27, 2021. If you feel as though your exemption decision was made without consideration of all available and/or relevant information, please submit such supplemental documentation to [EHSCompliance@northwell.edu](mailto:EHSCompliance@northwell.edu).

Although mask wearing and other existing protocols will continue to be required to help prevent the spread of the virus, these life-saving vaccines remain our best shot at crushing COVID-19. As healthcare professionals and members of the largest healthcare provider in New York State, we have a unique responsibility to get vaccinated to end the pandemic and protect our patients, colleagues, families and communities. If you have additional questions, please explore [educational materials](#) on the employee intranet, including FAQs, information sheets, recorded discussions and videos, some of which are available in multiple languages. Those without intranet access can also visit our [digital vaccine hub](#) for the community. Please reach out if we can provide you with any other information. Northwell is committed to providing you with the information you need to make this decision and can connect you with an expert. We urge you to get your first dose of the COVID-19 vaccine by September 27, 2021 to ensure you can help us continue to improve the health and quality of life of the communities we serve.

If you choose to not receive your first shot before September 27, 2021, you will be non-compliant with the NYS mandate and your continued employment will be at risk. In the meantime, we appreciate your cooperation with health and safety precautions to protect the health of you, your

colleagues, our patients and visitors. These precautions include the requirement to undergo weekly nasal PCR testing in accordance with Northwell's mandatory PCR testing program. Additionally, between now and September 27, 2021, you may be unable to participate in certain meetings, gatherings, and/or Northwell-sponsored events and programs due solely to your unvaccinated or partially vaccinated status.

Please know that Northwell has a COVID-19 vaccine reserved for all team members. If you are interested in receiving a COVID-19 vaccine, you can book an appointment through the Employee Health Portal. If you opt to get vaccinated at a non-Northwell source, you can upload proof to the portal or email it to [REDACTED]@northwell.edu to record your vaccination status.

Thank you,

Northwell Health Human Resources

CC: Site HRBP

**EXHIBIT D**



**Personal and Confidential**

September 29, 2021

Sent Via: Electronic Mail

**Re: Accommodation Status – Medical Exemption Request**

Dear Candice Dcunha:

You were previously informed that your request for a medical exemption from New York State's mandate that requires all personnel employed or affiliated with a health care facility to receive their first dose of the COVID-19 vaccine by September 27, 2021 was denied. Please be advised that after reviewing your resubmission of your request and supporting materials, if any, the initial determination on your request is unchanged and we are unable to grant you a medical exemption from the NYS vaccine mandate. Exemption decisions are based on known COVID-19 vaccine safety risks. Your stated reason for a medical exemption is not a contraindication to COVID-19 vaccination. This means that in accordance with the NYS vaccination mandate, you were required to receive your first dose of the COVID-19 vaccine by September 27, 2021.

Although mask wearing and other existing protocols will continue to be required to help prevent the spread of the virus, these life-saving vaccines remain our best shot at crushing COVID-19. As healthcare professionals and members of the largest healthcare provider in New York State, we have a unique responsibility to get vaccinated to end the pandemic and protect our patients, colleagues, families and communities. If you have additional questions, please explore educational materials on the employee intranet, including FAQs, information sheets, recorded discussions and videos, some of which are available in multiple languages. Those without intranet access can also visit our digital vaccine hub for the community. Please reach out if we can provide you with any other information. Northwell is committed to providing you with the information you need to make this decision and can connect you with an expert. We urge you to get your first dose of the COVID-19 vaccine to ensure you can help us continue to improve the health and quality of life of the communities we serve.

At this time you are noncompliant with the NYS mandate and your continued employment is now at risk. We encourage you to get the vaccine immediately or you are risking your continued employment with Northwell. In the meantime, we appreciate your cooperation with health and safety precautions to protect the health of you, your colleagues, our patients and visitors. These precautions include the requirement to undergo weekly nasal PCR testing in accordance with Northwell's mandatory PCR testing program. Additionally, you may be unable to participate in certain meetings, gatherings, and/or Northwell-sponsored events and programs due solely to your unvaccinated or partially vaccinated status.

Please know that Northwell has a COVID-19 vaccine reserved for all team members. If you are interested in receiving a COVID-19 vaccine, you can book an appointment through the Employee Health Portal. If you opt to get vaccinated at a non-Northwell source, you can upload proof to the portal or email it to [REDACTED]@northwell.edu to record your vaccination status.

Thank you,

Northwell Health Human Resources

CC: Site HRBP

**EXHIBIT E**





kate Rafla >

Thu, Sep 30, 12:05 PM

Hi Candace it's kate. Can you email me a copy of your exemption paperwork ASAP? And can you Confirm which HR OFFICE You dealt with back in August

Sure. I submitted it to the HR office on the 2nd floor by the cafeteria at SIUH north

What email address should I submit it to?

[Krafla@northwell.edu](mailto:Krafla@northwell.edu)

Thank you

Just emailed to you

Delivered

Thank you



iMessage



Apple Pay



**EXHIBIT F**



**Personal and Confidential**

October 1, 2021

Sent Via: Electronic Mail

**Re: Accommodation Status**

Dear Dr. Candice Dcunha,

We are in receipt of your request for a religious exemption from the New York State vaccine mandate requiring health care workers to receive their first dose of a COVID-19 vaccine by September 27. To the extent that you received an earlier communication from Northwell regarding your religious exemption request, including any prior denials, please disregard that earlier communication.

As you may be aware, the State revised its mandate on August 26 to limit exemptions to those that are medical in nature, thereby excluding any/all religious exemptions. This meant that the State no longer permitted healthcare employers (including Northwell) from considering religious exemptions. On September 14, a court granted a temporary order that placed a hold on the New York State Department of Health's ability to enforce its prohibition on religious exemptions. At this time, it is unknown whether the court's temporary order will become permanent. While we understand your request for a religious exemption, and the rationale behind your request, we must also be mindful of the State's mandate as well as our operational concerns, including the safety of Northwell's patients, visitors and team members.

Therefore, in an effort to provide clarity to you while we await the court's final determination and in an effort to address operational concerns, Northwell has reviewed your religious exemption request in advance of the Court's ruling in the event that Northwell is ultimately permitted to consider such religious exemption. In accord with the principles that would apply should such religious exemptions be permitted, we nevertheless have determined that your religious exemption request must be denied as it would create an undue hardship. Specifically, we have determined that permitting you, as an unvaccinated team member, to report to your worksite that provides direct patient care and/or has direct contact with the general public poses an unacceptable health and safety threat to patients, co-workers, and visitors. Moreover, there is no alternative arrangement that can be made that would allow you to perform the essential functions of your position while unvaccinated without creating an undue hardship.

As such, consistent with our requirements of all other Northwell employees, you are immediately required to receive a first dose of the COVID-19 vaccine as a condition of continued employment. Unless you take immediate steps to get your first dose, you will be considered non-compliant with the COVID-19 vaccine mandate.

Please know that Northwell has a COVID-19 vaccine reserved for all team members. If you are interested in receiving a COVID-19 vaccine, you can book an appointment through the Employee Health Portal. If you opt to get vaccinated at a non-Northwell source, you can upload proof to the portal or email it to [REDACTED]@northwell.edu to record your new vaccination status.

Thank you,

Northwell Health  
Human Resources

**EXHIBIT G**



**Staten Island University Hospital**  
**Northwell Health®**

September 28, 2021

Dcunha, Candice  
[REDACTED]

Dear Candice,

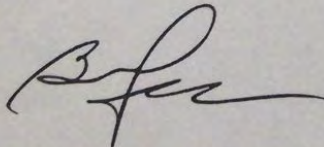
Northwell Health has continued to underscore its obligation to lead by example in raising health for our patients and communities by ensuring that all of our team members become vaccinated.

As communicated to you numerous times over the past several weeks all Northwell team members were required to take steps to become compliant with the COVID-19 vaccine mandate for healthcare workers, or risk termination of employment for non-compliance. Because our records indicate that you have not taken any steps to receive your first dose of the vaccine as of today, September 28, 2021, today will be your last day of employment at Northwell Health.

Please note that if you make arrangements to receive your first dose of the vaccine in the near future we hope that you will seek to return to Northwell. In the event that you do receive the vaccine, please contact Mary Beth Springstead at [REDACTED] to understand what steps to take to pursue your reemployment with Northwell.

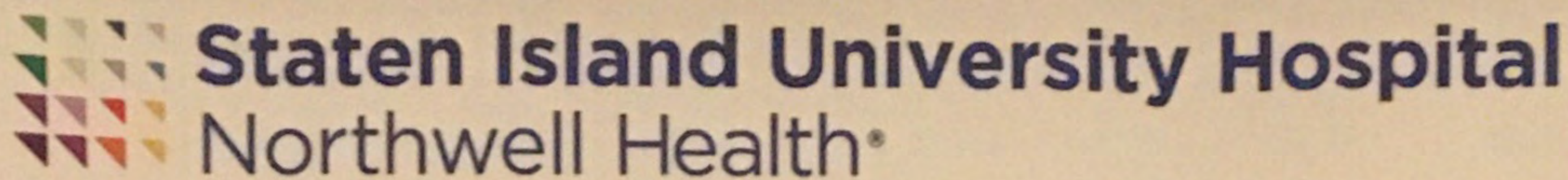
We wish you the best in your future endeavors.

Sincerely,



Brahim Ardolic, MD  
Executive Director





September 28, 2021

Dcunha, Candice  
[REDACTED]

Dear Candice,

Northwell Health has continued to underscore its obligation to lead by example in raising health for our patients and communities by ensuring that all of our team members become vaccinated.

As communicated to you numerous times over the past several weeks all Northwell team members were required to take steps to become compliant with the COVID-19 vaccine mandate for healthcare workers, or risk termination of employment for non-compliance. Because our records indicate that you have not taken any steps to receive your first dose of the vaccine as of today, September 28, 2021, today will be your last day of employment at Northwell Health.

Please note that if you make arrangements to receive your first dose of the vaccine in the near future we hope that you will seek to return to Northwell. In the event that you do receive the vaccine, please contact Mary Beth Springstead at [REDACTED] to understand what steps to take to pursue your reemployment with Northwell.

We wish you the best in your future endeavors.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Ardolic".

Brahim Ardolic, MD  
Executive Director

10/1/2021  
LAST WORK DAY  
WAS 10/1/2021.  
[Signature]



**EXHIBIT H**





October 5, 2021

VIA EMAIL DELIVERY

Candice D'Cunha, DPM  
[REDACTED]


Dear Dr. D'Cunha,

Northwell Health has continued to underscore its obligation to lead by example in raising health for our patients and communities by ensuring that all of our team members become vaccinated against COVID-19. This obligation is all the more critical for Northwell physicians, such as yourself, who help model the standard for our entire organization.

As was communicated to you numerous times over the past several weeks, including as recently as earlier this week, all Northwell team members were required to receive the first dose of the COVID-19 vaccine by September 27. Because our records indicate that you have not taken steps to receive your first dose of the vaccine and your failure to do so jeopardizes the welfare of patients, other staff and the Northwell Health Training Program (the "Program"), this letter serves as notice of the termination of your employment and your contract for appointment as a member of the House Staff in the Program, effective October 7, 2021.

Upon receipt of this letter, you are encouraged to immediately schedule an appointment to receive the first dose of the vaccine and to provide satisfactory proof of vaccination to Employee Health Services prior to the termination date of October 7, 2021. Please upload your proof of vaccination to the Employee Health Portal or email it to [REDACTED]@northwell.edu. If you decline to be vaccinated and do not have a valid exemption, you may choose to resign your employment and contract by submitting a letter of resignation to your Program Director.

If you remain non-compliant with the vaccine mandate, your employment will be terminated as of October 7, 2021. In that event, you will receive a separate written notice regarding the termination of your employment and benefits, as well as your right to request a review of the termination as per the Office of Academic Affairs' Policies 7 and 7A on Due Process for Adverse Actions Taken Against Residents/Fellows.

Sincerely,  
  
Amy Durante, MHA  
Director, Medical Education

cc: Human Resources Credentialing File: Candice D'Cunha  
John Sottile, DPM Podiatry Program Director



## OFFICE OF ACADEMIC AFFAIRS

### **POLICY # 7: DUE PROCESS FOR ADVERSE ACTIONS TAKEN AGAINST RESIDENTS/FELLOWS**

**DATE REVISION APPROVED BY GMEC: March 11, 2020**

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#### **I. Purpose**

- a. The purpose of this policy is to establish institutional due process for the resolution of adverse actions taken against Trainees by their training programs or by the Institution. Adverse actions are those actions that could result in a Trainee's intended career development.
- b. The term Trainee in this policy includes all residents and clinical fellows in postgraduate medical education programs sponsored by Northwell Health (Northwell or Institution).
- c. Remedial Action (remediation) for Trainees is not covered under this policy as it is not an adverse action. Therefore, it cannot be challenged.

#### **II. Adverse Actions – Overview**

- a. If the Program Director determines, in consultation with the Department Chair and Office of Academic Affairs (OAA), that a Trainee's performance fails to meet required standards and/or the competencies and standards of the ACGME, AOA, CODA, and/or CPME, the Program Director may take one or more of the following actions ("Adverse Action"):
  - 1) Impose a term of probation
  - 2) Suspend or partially suspend the Trainee's participation in the program
  - 3) Deny the Trainee credit for all or a portion of the academic year (as part of an Adverse Action.)
  - 4) Deny renewal of the Trainee's contract
  - 5) Dismiss the Trainee from the Program
  - 6) Such other action as may be appropriate under the circumstances
- b. An Adverse Action may be taken by the Program Director or the Department Chair, with regard to any Trainee who fails to comply with the provisions set forth in the

House Staff Manual, the Trainee's agreement with Northwell, Departmental policies or procedures, or any applicable laws, rules, and regulations.

- c. In determining which Adverse Action to take, the Program Director may consider factors such as the nature and severity of the circumstances giving rise to the need for an Adverse Action, the protentional impact on patient health or safety, the impact of the Trainee's conduct on the training program or the Institution, the likelihood that the situation can be successfully remediated, the degree of notice to the Trainee of Trainee's deficiencies and the opportunity to remedy same, and such other factors as the Program Director deems appropriate.

### **III. ADVERSE ACTIONS**

#### **1. Probation**

- a. If the Program Director, in consultation with the Program's Clinical Competency Committee and Department Chair, determines that a Trainee's performance is unsatisfactory, the Program Director may place the Trainee on probation.
- b. Probation connotes a process of intensified evaluation, education and monitoring.
- c. The Program Director must give the Trainee written notice of probationary status prepared on the Probation Form, which must include the duration of probation, the specific actions or deficiencies that led to the imposition of probation, a plan to remedy the identified deficiencies, and methods and frequency of performance evaluation during the probationary period. A copy of the Probation Form must be forwarded to the OAA.
- d. At the end of the probationary period, the Program Director must notify the Trainee in writing whether the Trainee:
  - 1) was successful in meeting the terms of the probation and will remain in the program
  - 2) was not fully successful in meeting the terms of the probation and will remain on probation;
  - 3) was unsuccessful in meeting the terms of the probation and will be dismissed from the program;
  - 4) requires additional or different action.
- e. Probation may be required to be reported to future employers or licensing and administrative agencies.

#### **2. Suspension or Partial Suspension:**

- a. If at any time the actions of Trainees present a threat to themselves or a threat to the welfare or safety of patients, staff or others or to the integrity of the program or Institution, the Program Director, in consultation with the Department Chair, may immediately prohibit a Trainee from participation in all aspects of the training

program ("Suspension"). Academic credit will not be given to a Trainee during the suspension period.

- b. Depending on the severity of the circumstances, a Program Director may also decide to restrict the Trainee's participation to certain clinical and/or academic activities ("Partial Suspension"). The amount of academic credit to be awarded to a Trainee during a period of Partial Suspension is at the discretion of the Program Director.
- c. The Trainee must be given notice of such Suspension, or Partial Suspension, and the reasons therefor verbally with written notice to be provided to the Trainee as soon as practicable under the circumstances.
- d. At the end of the Suspension or Partial Suspension, the Program Director must notify the Trainee in writing as to what further action is to be taken.
- e. A Suspension, or Partial Suspension, may be required to be reported to future employers or licensing and administrative agencies.

\*\*\*If a Trainee is suspected of conduct that poses an immediate threat to the safety or welfare of patients, staff or others or to the integrity of the program or Institution, a Trainee may be suspended while such allegations are investigated ("Investigatory Suspension"). If after investigation the allegation(s) are found to be unsubstantiated, a letter will be placed in the Trainee's file by the Program Director documenting the investigatory findings. An Investigatory Suspension is not considered an Adverse Action for the purpose of this Policy and may not be challenged.\*\*\*

- f. Extended time away from residency activities during any of the Adverse Actions listed above may need to be made up at the discretion of the Program Director.

### **3. Denial of Academic Credit**

- a. If a Trainee does not satisfactorily complete a probationary period, fails to make up work missed during a suspension, or has otherwise failed to make sufficient academic progress to be advanced to the next training level, the Program Director, in consultation with the Clinical Competency Committee, and Department Chair may require the Trainee to repeat all or part of the academic year's work.
- b. If a Trainee is dismissed before the completion of the Trainee's academic year, the Program Director will determine the number of months of credit to be given the Trainee for that academic year.
- c. Denial of credit may be required to be reported to future training programs, employers, or licensing and administrative agencies.

### **4. Non-Renewal/Dismissal**

- a. A Trainee may be dismissed from the program or be denied a renewal contract for the next academic year, if the Trainee has failed to meet accepted academic, clinical and/or professional standards, or the Trainee has engaged in conduct that threatens

the welfare or safety of patients, staff or others or the integrity of the training program or the Institution.

- b. The decision to dismiss a Trainee or not to provide a Trainee with a renewal contract will be made by the Program Director, in consultation with the Department Chair and the Clinical Competency Committee. No later than four months prior to any dismissal or non-renewal of the Trainee's contract, the Program Director must provide the Trainee with written notice of the decision to dismiss or not to renew, stating the reasons therefor. However, if the primary reason for dismissal or non-renewal occurs within the four months prior to the end of the Trainee's contract, then the Program Director must provide the Trainee with written notice of the decision as soon as the circumstances will reasonably allow.
- c. The dismissal or non-renewal may be reported to future training programs, employers, or licensing and administrative agencies.

## **5. Notice and Appeal Procedure**

- a. Whenever a Program Director in consultation with the Department Chair and Clinical Competency Committee contemplates taking any of the Adverse Actions listed above, he/she will notify the Office of Academic Affairs (OAA) of the potential action and the facts upon which it is based.
- b. When a Trainee is subject to any of the Adverse Actions described above, as soon as practicable the Trainee must be given written notification of the Adverse Action from the Program Director with a copy to the OAA. This notice must include the circumstances which gave rise to the Adverse Action, the duration of the action, and any conditions imposed for resuming participation in the training program ("Adverse Action Notice") and will be accompanied by a copy of the Policy. The Trainee may challenge the Adverse Action by requesting that an ad hoc committee be convened to review the action taken. Such request must be made in writing to the OAA within seven (7) business days of the Trainee's receipt of the Adverse Action Notice.
- c. Upon receipt of a Trainee's timely request for a review, the OAA must appoint an Adverse Action Review Committee ("Committee") to review the Adverse Action (The "Review"). The Committee will consist of a Resident or Fellow selected by the Resident Forum or the House Staff Association, as applicable, and two attending physicians, one of whom will serve as the Chair of the Committee ("Committee Chair"). None of the Committee members, including the Resident/Fellow representative, may be a member of the affected Trainee's department. The OAA must notify the Program Director and the affected Trainee in writing of the time, date, and place of Review ("Notice of Review") and both parties are expected to appear before the Committee to discuss their position on the Adverse Action taken. The Review will take place within thirty (30) business days from the date that the Trainee receives the Notice of Review.

- d. If the Adverse Action is a suspension, termination or non-renewal, the Review may be accelerated upon the request of the affected Trainee, to take place on a date that is more than fifteen (15) days, but less than thirty (30) days from the date the OAA receives the request.
- e. The Review must be held in accordance with the procedures set forth herein and in "Policy #7A Adverse Action Review and Appeal Rules and Regulations" ("Rules and Regulations")
- f. Following the conclusion of all fact finding the Committee may accept, reject or modify the Adverse Action taken, or take any other action that the Committee deems appropriate under the circumstances. The action the Committee takes and the supporting reasons must be in writing ("Report")
- g. No later than 15 days following the conclusion of the Review, a copy of the Report must be sent to the affected Trainee and the Program Director. If, after receipt of the Report, either the Trainee or Program Director wishes to challenge the Committee's decision, either party must submit its request for an appeal, and the reasons therefor, in writing to the OAA within seven (7) days of receipt of the Report. If neither party submits a timely request for appeal, the decision of the Committee will be final and binding upon all parties.

As soon as practicable following receipt of a request for an appeal, the Chief Academic Officer ("CAO") will receive the Trainee's record, the basis for the Adverse Action and the Report. The CAO may request and consider any additional information the CAO deems necessary and must conduct the appeal pursuant to the procedures set forth in the Rules and Regulations. Within 15 days of the CAO's receipt of the record the CAO will notify the Trainee, the Program Director, and the OAA of the CAO's decision in writing. The decision of the CAO will be final and binding upon all parties. It will be the responsibility of the OAA to advise the Graduate Medical Education Committee upon ultimate disposition of each Adverse Action.



## **POLICY #7A: ADVERSE ACTION REVIEW AND APPEAL RULES AND REGULATIONS**

**DATE REVISION APPROVED BY GMEC: March 11, 2020**

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### **I. Purpose**

The purpose of this policy is to establish rules and regulations governing the review and appeal of Adverse Actions, as that term is defined in Policy #7: Due Process For Adverse Actions Taken Against Resident/Fellows ("Due Process Policy")<sup>1</sup>.

### **II. Procedures**

Except as provided in the Due Process Policy, the procedures set forth below will apply whenever a Trainee requests a Review to challenge an Adverse Action or when the Program or Trainee requests an appeal of the Committee's decision.

#### **A. Review**

1. In connection with the Review, the Committee must offer the opportunity for the Trainee to appear; any trainee who refuses to cooperate and/or appear at the scheduled review will be deemed to have waived his or her right under this policy.
2. The Committee will meet with the Trainee and Program Director to hear evidence and/or witness testimony in support of the Trainee and Program Director's positions. The Review is not considered a formal hearing and therefore is not subject to any formal rules of evidence or procedure. The introduction of any relevant information, including witnesses, will be determined by the Committee Chair.
3. The Trainee may be represented by counsel at the Review. If the Trainee intends to have such legal representation, the Trainee must notify the OAA in writing no later than five (5) business days after submitting his/her request for a Review. If the Trainee is to be represented by counsel, then the Program and the Committee may also be represented by counsel, provided that counsel representing the Program cannot be the same counsel representing the Committee. If the Trainee elects not to have an attorney present at the Review, neither the Program nor the Committee will have legal representation. The primary role of all attorneys present during the Review will be limited to providing advice to their clients. Counsel may make evidentiary and/or procedural objections, which will be ruled upon by the Committee Chair based on common sense and fairness, but counsel will not be permitted to make opening or closing statements or examine or cross-examine witnesses.

*<sup>1</sup> All capitalized terms herein will have the meaning ascribed to such terms in the Due Process Policy.70236 v3*



4. The Trainee and the Program will be given the opportunity to make an opening statement. After opening statements have concluded, the Program will be permitted to present its case-in-chief by describing the Adverse Action taken and the bases therefor, which it may do through the use of documentary and/or testimonial evidence.
5. After the Program has presented its case-in-chief, the Trainee will present his/her case-in-chief. To reverse the Adverse Action the Trainee has the burden to persuade the Committee that the Trainee failed to receive notice of his/her deficiencies in the ACGME Core Competencies and a
6. reasonable opportunity to remedy same; or that the Adverse Action lacks any factual basis or is not in compliance with ACGME, CODA, CPME or Northwell policies, including those contained in the house staff manual. The Trainee may meet this burden via documentary and/or testimonial evidence.
7. All participants at the Review will be afforded a reasonable opportunity to present their case through the presentation of documents and witnesses. At the discretion of the Committee Chair after each party has presented his/her case in chief, the parties may be provided the opportunity to rebut any testimony or document presented.
8. A record of the Review will be made by a court reporter who will be present during the entirety of the Review proceeding. Each party is responsible for possessing sufficient copies of all documents to be presented during the Review for all Committee members, the opposing party and his/her counsel, and the court reporter.
9. The Review will not be open to the public and no individuals other than the Committee members, the parties and their counsel, and any relevant witnesses will be permitted to attend. All documents and testimony presented at the Review must be maintained in strict confidence.

## **B. Appeal**

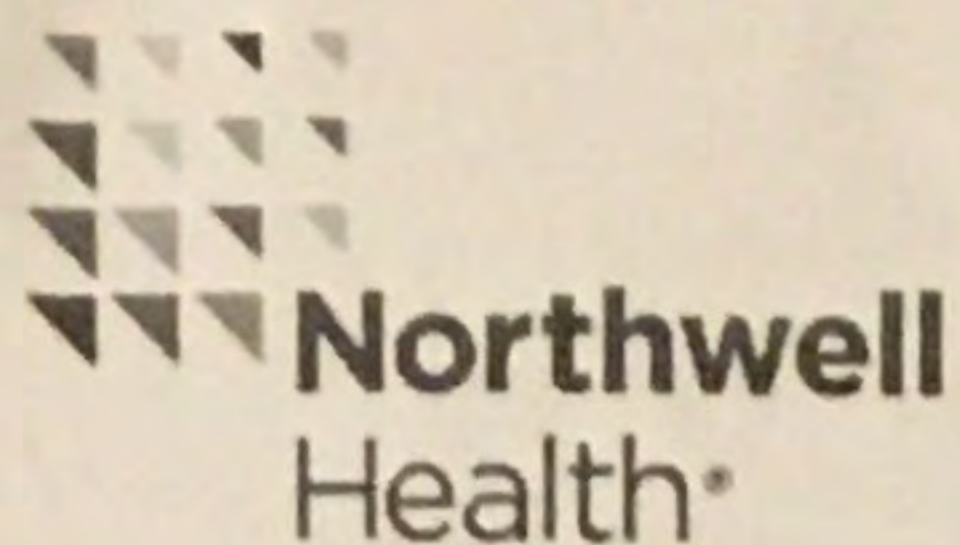
1. Upon the CAO's review of the record below, which will include the Trainee's file, the basis for the Adverse Action, all documents presented during the Review, the transcript of the Review, and the Committee's Report of its decision ("Record"), the CAO will determine the need for any additional documents or testimony from the parties.
2. If the CAO decides to permit oral argument by the parties, such argument will be limited only to those issues presented during the Review. The CAO will not consider any new arguments or witness testimony. In lieu of oral argument, the CAO may request a writing from the parties to clarify any issues raised during the Review. If the CAO makes such a request, both parties will be provided with the opportunity to provide such writing simultaneously. No reply statements will be permitted by either party. To the extent any party wishes to provide additional written evidence, absent a request from the CAO, the CAO retains sole discretion to accept such writing, provided that the party seeking to provide such evidence can show that such writing is directly related to the issues presented at the Review, and such information was not available at the time of the Review or could not have been presented due to circumstances that could not have been anticipated in the exercise of reasonable diligence.



3. In rendering a decision on appeal, the CAO retains sole discretion to base such decision solely on review of the Record, without oral argument or writings from the parties.
4. To reverse the Committee's decision, the party requesting the appeal has the burden of persuading the CAO that the Committee's decision lacked a factual basis or could not have reasonably been made given the burden of the prevailing party.
5. The CAO may affirm, modify, or reverse the Committee's decision or remand the matter to the Committee for reconsideration.

**EXHIBIT II**

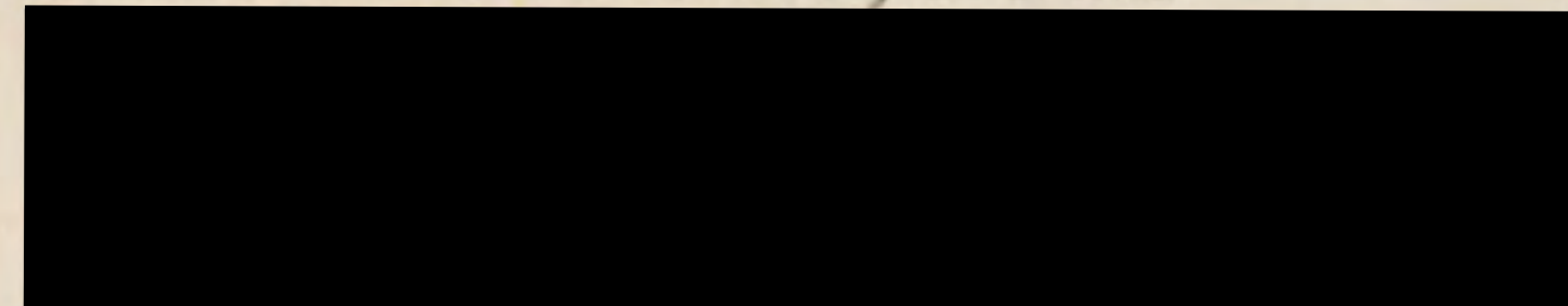




October 7, 2021

VIA HAND DELIVERY

Candice D'Cunha, DPM



Re: Notice of Adverse Action

Dear Dr. D'Cunha,

This letter provides you formal notice of the decision of the Program Director in consultation with executive leadership of Staten Island University Hospital/Northwell Health to dismiss you from the Northwell Health Training Program – SIUH – Podiatric Medicine and Surgery, Reconstructive Rearfoot & Ankle (the “Program”), effective immediately (“Adverse Action”). This notice is provided in accordance with the Graduate Medical Education Office of Academic Affairs’ Policy #7: *Due Process Policy for Adverse Actions Taken Against Residents/Fellows*. Your employment agreement with Northwell Health is also terminated as of this date.

As you know, you were advised by letter dated October 5, 2021 that your employment and contract for participation in the Program would be terminated in the event that you continued to be non-compliant with Northwell Health’s mandate that all team members receive the first dose of the COVID-19 vaccine by September 27. Our records indicate you have not taken steps to receive your first dose of the vaccine in violation of this mandate and applicable New York State laws, rules, and regulations. By the foregoing conduct, the Program has determined that your continued participation in the Program would jeopardize the welfare of patients, other staff, and/or the Program.

Pursuant to the *Due Process Policy for Adverse Actions Taken Against Residents/Fellows* (a copy of which is enclosed, along with a copy of Policy #7A: *Adverse Action Review and Appeal Rules and Regulations*), you may request that an *ad hoc* committee be convened to review this Adverse Action by submitting a written request to the Office of Academic Affairs (“OAA”) within 7 business days of your receipt of this notice.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. [unclear] DPM".

Program Director

cc: Office of Academic Affairs and Human Resources



**EXHIBIT J**

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Page 1

1

2

In the Matter of

3

THE ADVERSE ACTION REVIEW MEETING BETWEEN

4

CANDICE D'CUNHA, DPM

5

– and –

6

7

NORTHWELL HEALTH, INC.

8

9

November 22, 2021

9:05 a.m.

10

Held remotely via Zoom

11

12

13

BEFORE:

STEPHEN BARONE, M.D.

REBECCA ZWEIFLER, M.D.

14

SUZANNE EL-SAYEGH, M.D.

15

ALSO PRESENT:

JOHN SOTTILE, M.D.

16

WILLIAM LOWE, M.D.

17

TAMIRA BRUNSON, Northwell Health

18

GUS PHILLIPS, Gregory Edwards

19

20

REPORTED BY:

MICHELLE CONERO, Court Reporter

21

22

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Page 2

1	E X H I B I T S		
2			
3	PROGRAM		
4	EXHIBIT NO.	DESCRIPTION	PAGE
5	1	10 NYCRR 2.61, Prevention	Premarked
6		of COVID-19 Transmission	
7		by Covered Entities	
8	2	Human Resources Policy and	Premarked
9		Procedure Manual	
10	3	COVID-19 vaccination –	Premarked
11		medical accommodation	
12		request form	
13	4	9/20/21 e-mail to Candice	Premarked
14		D'Cunha and 9/29/21 e-mail	
15		to Candice D'Cunha	
16	5	COVID-19 vaccine update from	Premarked
17		Northwell Health dated	
18		between 8/2/21 and 10/4/21	
19	6	COVID-19 vaccination –	Premarked
20		religious accommodation	
21		request form	
22	7	10/1/21 e-mail to Candice	Premarked
		D'Cunha	
	8	1/21 letter to Candice	Premarked
		D'Cunha	
	9	2020/2021 Resident/Fellow	Premarked
		Manual	
	10	Northwell Health	Premarked
		documentation	

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1 EXHIBITS (CONT.):

2

3

EXHIBIT NO.

4

DESCRIPTION

PAGE

5

11

10/5/21 e-mail to Candice  
D'Cunha

Premarked

6

7

12

10/7/21 e-mail to Candice  
D'Cunha

Premarked

8

13

10/8/21 termination  
acknowledgement

Premarked

9

10

14

10/11/21 e-mail to Amy  
Durante from Candice D'Cunha

Premarked

11

15

11/4/21 e-mail to Candice  
D'Cunha

Premarked

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1 DR. BARONE: William, good morning.

2 Can you introduce yourself? Are you going  
3 to be a witness?

4 MR. LOWE: Yes. My name is William  
5 Lowe, I'm the medical director for the  
6 Employee Health Service. I am a witness for  
7 today.

8 DR. BARONE: Okay. So I'm going to  
9 ask, I guess, Gus, can you put him in a  
10 holding room for the beginning of the  
11 presentation until it's time for him to be a  
12 witness?

13 MR. PHILLIPS: Yes.

14 And is it Dr. William Lowe?

15 MR. LOWE: Yes.

16 DR. BARONE: Tamira, can you please  
17 tell me your role?

18 MS. BRUNSON: I'm the paralegal. I'm  
19 presenting the exhibits on the screen for  
20 the hospital. I've also been controlling  
21 the screen to share the confidentiality  
22 statement.



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1 DR. BARONE: Okay. So your major role  
2 here is to just help present any of the data  
3 that we have to show?

4 MS. BRUNSON: Correct.

5 DR. BARONE: Okay, good. And  
6 Michelle, can you introduce yourself? Ms.  
7 Conero.

8 MS. CONERO: Sure. Good morning,  
9 everybody. I'm the court reporter. I will  
10 be taking down everything that is said  
11 today.

12 DR. BARONE: Okay. I'm going to start  
13 and read an opening statement.

14 MR. PHILLIPS: Counsel -- Mr. Barone,  
15 Candice, I just wanted to make sure I had  
16 your name. Is it Dr. Candice --

17 DR. D'CUNHA: Yes.

18 MR. PHILLIPS: What would your last  
19 name be? I just wanted to change it on the  
20 screen.

21 DR. D'CUNHA: It's D-'-C-U-N-H-A.

22 MR. PHILLIPS: Thank you.

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1 MS. EL-SAYEGH: Dr. Barone, who is the  
2 final person in the room? Dr. Sottile?

3 DR. BARONE: He's the program  
4 director.

5 DR. SOTTILE: I'm the program director  
6 for the podiatric residency program.

7 DR. BARONE: This is an opening  
8 statement regarding the Adverse Action of  
9 the Review Committee meeting with Candice  
10 D'Cunha.

11 Am I pronouncing it right, Candice?

12 DR. D'CUNHA: Correct.

13 DR. BARONE: I would like to call the  
14 meeting to order. My name is Dr. Stephen  
15 Barone and I am the program director of  
16 Pediatrics at Cohen's Children's Medical  
17 Center at Northwell. We're here to review  
18 the adverse action imposed with respect to  
19 Dr. Candice D'Cunha, specifically the  
20 decision to terminate her from the Podiatric  
21 Medical and Surgical Reconstructive Rear  
22 Foot and Ankle program at Staten Island

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1 University Hospital, which I will refer to  
2 as the program.

3 I'm serving as the chair of the  
4 Adverse Action Committee. I would like to  
5 take a moment to review the procedures for  
6 this morning's meeting. This review is  
7 being held in accordance with procedures set  
8 forth in policies number 7 and 7-A of the  
9 Office of Academic Affairs. Each party will  
10 be provided the opportunity to make an  
11 opening statement. John Sottile, the  
12 director of Podiatric Medicine and Surgery  
13 at the hospital, is also the program  
14 director. Dr. Sottile will open the meeting  
15 with a statement on behalf of the program.

16 Dr. D'Cunha, you'll make your  
17 opening statement once Dr. Sottile has  
18 completed his.

19 After opening statements have  
20 concluded, the program will present its case  
21 by describing the adverse action imposed  
22 against Dr. D'Cunha and the reasons

1 supporting such action, which can be made  
2 through the use of documentary evidence or  
3 witness testimony. In order to reverse the  
4 adverse action Dr. D'Cunha has the burden to  
5 persuade the committee that she failed to  
6 receive notice of any deficiency in ACGME  
7 core competencies and a reasonable  
8 opportunity to remedy same, or that the  
9 adverse action lacks any factual basis or is  
10 not compliant with ACGME, CODA, CPME or  
11 Northwell policies, including those  
12 contained in the house staff manual. Dr.  
13 D'Cunha may meet this burden by way of  
14 documentary or testimonial evidence. This  
15 meeting is not subject to any formal rules  
16 of evidence or procedure, and the committee  
17 will permit presentation of evidence and  
18 witnesses subject to any restrictions we may  
19 impose. On behalf of the committee I will  
20 make all the rulings with respect to whether  
21 the proposed evidence and witnesses are  
22 relevant to this review.

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1 I am going to ask the other two  
2 members of the committee to give their name,  
3 department and position. So you guys want  
4 to go ahead.

5 DR. EL-SAYEGH: Dr. Suzanne El-Sayegh.  
6 I'm the program director of Internal  
7 Medicine at Staten Island University  
8 Hospital Northwell, and I'm an associate  
9 chairman of Medicine.

10 DR. ZWEIFLER: I'm Dr. Rebecca  
11 Zweifler, I'm a third-year internal medicine  
12 resident at Lenox Hill Hospital.

13 DR. BARONE: The record should reflect  
14 that no one on this committee is a member of  
15 the Department of Podiatric Medical Surgery  
16 at the hospital.

17 Dr. D'Cunha has elected to proceed  
18 without an attorney. As a result, pursuant  
19 to policy 7-A, neither the program nor the  
20 committee will have an attorney present.

21 There is a court reporter here today,  
22 we introduced her, and a transcript of this

1 meeting will be made. All parties and  
2 witnesses should be sure to speak clearly  
3 and give only verbal responses so the court  
4 reporter may accurately transcribe the  
5 testimony provided during the meeting.

6 This review is not open to the public.  
7 All the documents and testimony present here  
8 shall be maintained in strict confidence.

9 As chairperson I'll preside over the  
10 meeting and maintain decorum and order.  
11 I'll ensure that all participants are  
12 offered a reasonable opportunity to present  
13 their case.

14 I will act on objections and requests  
15 for rulings based on common sense and  
16 fairness.

17 Of course this is a confidential  
18 proceeding. Nothing occurring during this  
19 meeting should be discussed outside the  
20 room. All documents presented to each party  
21 will be confidential.

22 The committee may accept, reject or

1           modify the adverse action taken or take any  
2           other action the committee deems appropriate  
3           under the circumstances. The action taken  
4           by the committee and the supporting reasons  
5           will be set forth within in a written report  
6           within 15 days of inclusion and review.  
7           Because the transcript of this meeting will  
8           be of great assistance to the committee in  
9           its deliberations, we ask the program and  
10          Dr. D'Cunha to agree that the review is  
11          deemed concluded -- is not deem concluded  
12          until after the committee receives the  
13          transcript.

14                 Is that okay with you, Dr. Sottile?

15                 DR. SOTTILE: Yes.

16                 DR. BARONE: Is that okay with you,  
17          Dr. D'Cunha?

18                 DR. D'CUNHA: Yes.

19                 DR. BARONE: Thank you.

20                 Unless there are any other matters  
21          anyone would like to raise at the time, I  
22          would ask the program to proceed.

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1                   Before I let Dr. Sottile make an  
2                   opening statement, any other questions or  
3                   concerns?

4                   (No response.)

5                   DR. BARONE: Please speak clearly and  
6                   at least at a reasonable pace so Michelle  
7                   can get everything down.

8                   Okay. Go, Dr. Sottile.

9                   DR. SOTTILE: Good morning. My name  
10                  is Dr. John Sottile and I am the program  
11                  director at Staten Island University  
12                  Hospital for the Podiatric Medical and  
13                  Surgical Residency Program. I will refer to  
14                  that program as program if needed as I  
15                  continue my opening statement.

16                 I was the program director to Dr.  
17                 Candice D'Cunha whose termination we are  
18                 here to review. Dr. D'Cunha became a  
19                 resident in the program beginning in June  
20                 2020. In the summer of 2021 New York State  
21                 issued a mandate requiring that all  
22                 healthcare workers receive the COVID-19



1 vaccine by September 27, 2021. Northwell  
2 also mandated that its team members receive  
3 the COVID-19 vaccine by that same date.

4 You will hear about the mandate from  
5 Dr. William Lowe who is a medical director  
6 for Northwell's Employee Health Service,  
7 also known as EHS.

8 As a resident in the program, an  
9 employee of Northwell, Dr. D'Cunha was  
10 required to follow and comply with all  
11 applicable laws, rules, regulations and all  
12 Northwell policies. Dr. D'Cunha chose not  
13 to be vaccinated. As the other residents in  
14 the program were being vaccinated in order  
15 to comply with the mandate, I learned that  
16 Dr. D'Cunha had not yet been vaccinated. I  
17 asked her and she said no. I recommended  
18 that she discuss it with her husband and her  
19 OB/GYN. The next time we discussed it she  
20 said that she had discussed it with her  
21 family and her OB but she still did not want  
22 to be vaccinated. She indicated that she

1           would seek a medical and religious  
2           exemption. We did not discuss the details  
3           of what those requests might be. You will  
4           hear from Dr. Lowe about her medical  
5           exemption request and from Vicki Kahaner,  
6           who is vice president of Employee Relations,  
7           about her religious exemption request.  
8           Those requests were denied. Without an  
9           approved exemption, Dr. D'Cunha needed to  
10          get vacc'd.

11                 On October 5, 2021 she was given a  
12          letter stating that she was out of  
13          compliance with the requirement that she be  
14          vaccinated by September 27th. The letter  
15          offered her a way to schedule the vaccine so  
16          she could comply, and further stated if she  
17          did not get vaccinated she would be  
18          terminated on October 7, 2021. She did not  
19          get vaccinated. By the letter dated  
20          October 7, 2021 she was given notice of this  
21          adverse action, namely that she was being  
22          terminated for her failure to comply with

1 the vaccine mandate.

2 We discussed it again at that time but  
3 there was nothing much more to say. Her  
4 request for this review will follow.

5 Candice will be given an opportunity  
6 to make her statement and then, as I  
7 mentioned, Dr. Lowe and Ms. Kahaner will  
8 address the nature of her request for  
9 exemptions from the vaccine mandate. If  
10 needed, we will discuss a timeline which we  
11 have prepared and documents included in that  
12 timeline.

13 Thank you.

14 DR. BARONE: Thank you. Dr. D'Cunha,  
15 would you like to make an opening statement?

16 DR. D'CUNHA: Just to verify here. I  
17 have the reasons for why I did want to ask  
18 for an appeal. I also have a longer  
19 testimonial of what I really do want to say.  
20 Does that come at a later time and then I  
21 just make this opening appeal request first?

22 DR. BARONE: You can make an opening

1 statement now. I mean later we may ask if  
2 you want to present any documents or  
3 evidence. If you want to make an opening  
4 statement, you can do it now.

5 DR. D'CUNHA: This is going to be a  
6 few minutes. So the reason for the appeal  
7 today from my standpoint is that there is no  
8 rational basis for me to be vaccinated while  
9 I'm pregnant. The safety of the vaccine for  
10 pregnant woman has not been established.  
11 There are studies indicating that there  
12 could be some cause for concern for pregnant  
13 women. My history of having COVID and the  
14 antibody test I provided both indicate that  
15 I have obtained natural immunity.

16 The failure of Northwell to  
17 accommodate me based on my pregnancy  
18 violates the Pregnancy Discrimination Act.  
19 The failure of Northwell to accommodate me  
20 based on my religious objection violates the  
21 Civil Rights Act of 1964. And then the  
22 termination by Northwell solely based on my



1 COVID vaccination status over and above all  
2 considerations of performance, ability and  
3 exclusive of any attempt to provide  
4 reasonable accommodations consistent with  
5 Northwell's practices up until a few months  
6 ago, including the use of PPE, social  
7 distancing and other measures, is  
8 inconsistent with the concept of due process  
9 which acknowledges the rights and the unique  
10 circumstances of individuals.

11 In 1927 a Supreme Court case, Buck  
12 versus Bell, Superintendent of State Colony  
13 Epileptics and Feeble Minded, concluded that  
14 it was acceptable for the Commonwealth of  
15 Virginia to sterilize Carrie Buck, who was  
16 deemed to be feeble minded, without her  
17 consent. Such an operation did not violate  
18 the Fourteenth Amendment guarantees of equal  
19 protection and due process of law according  
20 to the court. In the process of ruling that  
21 it did not, Supreme Court Justice Oliver  
22 Wendell Holmes stated it is better for all

1           the world if instead of waiting to execute  
2           degenerate offspring for crime, or to let  
3           them starve from their imbecility, society  
4           can prevent those who are manifestly unfit  
5           from continuing their kind. The principle  
6           that sustains compulsory vaccination is  
7           broad enough to cover cutting the fallopian  
8           tube. Three generations of imbeciles are  
9           enough. Justice Holmes was not speaking for  
10          a lunatic fringe. He was writing for eight  
11          of nine Supreme Court justices. He was also  
12          speaking for a scientific establishment that  
13          had, to a large degree, accepted the  
14          principle of eugenics in the service of  
15          racial purity. That same principle was also  
16          taking hold in Germany and gave way to the  
17          scourge of Naziism.

18                 Just to clarify here in case anyone  
19                 was lacking this information, Carrie Buck  
20                 was a woman who was raped by her foster  
21                 parents' nephew. She was not someone who  
22                 was feeble of mind. They were simply trying

1 to hide her from society because she got  
2 pregnant as a result of the rape. She was  
3 not informed that she ever was to be  
4 sterilized. She only found that out years  
5 later. Five years later, in 1932, the  
6 United States Public Health Service  
7 commenced a study about the ravages of  
8 untreated syphilis in black men in Tuskegee,  
9 Alabama. Over a period of 40 years the U.S.  
10 Government doctors withheld treatment,  
11 including penicillin, to roughly 200 black  
12 men in an episode that has become one of the  
13 most infamous in U.S. history.

14 When the story of the testing  
15 experiments broke in 1972, Dr. J.D. Millar,  
16 head of the Venereal Disease branch of the  
17 CDC, stated the study began when attitudes  
18 were much different on treatment and  
19 experimentation. At this point in time,  
20 with the knowledge of treatment and the  
21 disease and the revolutionary change in  
22 approach to human experimentation, I don't

1 believe the program would be undertaken is  
2 what he said.

3 When the story broke in 1972, an ad  
4 hoc advisory panel was put together to  
5 review the study. The men were never  
6 offered or told that the research was  
7 voluntary. They were never told that they  
8 could back out of the program. They were  
9 never told when treatment was made  
10 available. The revolution that he was  
11 speaking of, which was borne of these  
12 shameful events, its found embodiment in the  
13 Belmont Report.

14 The Belmont Report was written by the  
15 National Commission for the Protection of  
16 Human Subjects of Biomedical and Behavioral  
17 Research. The commission, created as a  
18 result of the National Research Act of 1974,  
19 was charged with identifying the basic  
20 ethical principles that should underlie the  
21 conduct of biomedical and behavioral  
22 research involving human subjects and



1           developing guidelines to assure that such  
2           research is conducted in accordance with  
3           those principles. Informed by monthly  
4           discussions that spanned nearly four years  
5           and an intensive four days of deliberation  
6           in 1976, the commission published the  
7           Belmont Report which identifies basic  
8           ethical principles and guidelines that  
9           address ethical issues arising from the  
10          conduct of research with human subjects.

11                 One very specific thing is care should  
12          be taken to ensure information about risks  
13          should never be withheld for the purpose of  
14          eliciting cooperation of subjects.

15                 The Belmont Report is critical for  
16          defining the concept of informed consent,  
17          but especially in this context because it  
18          speaks directly to the definition of  
19          coercion and undue influence.

20                 Coercion occurs when an overt threat  
21          of harm is intentionally presented by one  
22          person to another in order to obtain

1 compliance. Unjustifiable pressures usually  
2 occur when persons of authority or  
3 commanding influence, especially where  
4 possible sanctions are involved, urge a  
5 course of action for a subject. Undue  
6 influence, by contrast, occurs through an  
7 offer of excessive, unwarranted,  
8 inappropriate or improper reward or other  
9 overture in order to obtain compliance.  
10 Also, inducements that would ordinarily be  
11 acceptable may become undue influences if  
12 the subject is especially vulnerable.

13 Unjustifiable pressure usually when  
14 persons in position of authority or  
15 commanding influence, especially where  
16 possible sanctions are involved, urge a  
17 course of action for a subject. A continuum  
18 of such influencing factors exist, however,  
19 and it is impossible to state precisely  
20 where justifiable persuasion ends and undue  
21 influence begins. Undue influence would  
22 include actions such as manipulating a

1 person's choice through the controlling  
2 influence of a close relative and  
3 threatening to withdraw health services to  
4 to which an individual would otherwise be  
5 entitled.

6 The American Medical Association Code  
7 of Medical Ethics Opinion 2.1.1 states  
8 informed consent of medical treatment is  
9 fundamental in both ethics and law.  
10 Patients have the right to receive  
11 information and ask questions about  
12 recommended treatments so they can make well  
13 considered decisions about care. Successful  
14 communication of the patient-physician  
15 relationship fosters trust and supports  
16 shared decision making.

17 At every stage of my training I have  
18 had the principle of informed consent  
19 reinforced. You require that I confer it on  
20 our patients, and if I did not I would  
21 rightly be justified for disciplinary  
22 action. Instead we have convened this

1           hearing because, as a patient, you want to  
2           deny me informed consent. You want to exert  
3           the coercive pressure of the loss of my  
4           training and my livelihood on the question  
5           of whether I will take medicine that I don't  
6           want while I am pregnant. I would never, as  
7           a matter of medical ethics and morality, put  
8           my patients in such a situation, and, if I  
9           did, you would be justified in firing me. I  
10          do not see how you could think that this  
11          could possibly be acceptable.

12                 I worked during the pandemic at this  
13          hospital while pregnant with my first child  
14          and became sick with COVID at just three  
15          months postpartum while serving Northwell's  
16          patients. I put myself and my family at  
17          considerable risk to answer the call to  
18          provide medical service in your facilities.  
19          I have performed well in all of my tasks.  
20          In the process of denying my legitimate  
21          medical and religious objections to  
22          vaccination, you are looking past all of the

1 things that make me a person, a human being,  
2 and you're reducing me to a single  
3 characteristic. This is dehumanizing and I  
4 deserve better.

5 I have achieved natural immunity by  
6 becoming sick with COVID in Northwell's  
7 facilities. There is no evidence anywhere  
8 of a person with natural immunity conferring  
9 the disease on another person. There's no  
10 evidence of any health reason for me to take  
11 the vaccine or be fired for not taking it,  
12 not a shred, and HHS admitted this only days  
13 ago.

14 I have legitimate religious reasons  
15 for declining the vaccine. The law clearly  
16 states that sincere religious beliefs are  
17 easy to establish and that employers must  
18 accommodate them.

19 For all of these reasons I  
20 respectfully ask that you reverse your  
21 termination decision and reinstate me.

22 Thank you.



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1 DR. BARONE: Thank you for your  
2 statement.

3 Dr. Sottile, now we move on to you, if  
4 you have any documents you want to present  
5 or witnesses you want to present.

6 DR. ZWEIFLER: Just briefly. There  
7 was a sentence I missed. She said something  
8 admitted a few days ago. What was that  
9 sentence? Admitted --

10 DR. D'CUNHA: That a letter that --

11 DR. ZWEIFLER: Can you just reread  
12 that sentence?

13 DR. D'CUNHA: Sure. There is no  
14 evidence of any health reason for me to take  
15 the vaccine or be fired for not taking it,  
16 not a shred, and HHS admitted this only days  
17 ago.

18 DR. ZWEIFLER: Thank you.

19 DR. SOTTILE: Dr. Barone, the  
20 testimonial outline that I have is just an  
21 exhibit of contracts, statements, a fellow  
22 -- a resident and fellow manual for which

1           all of the information is stating that our  
2           residents are supposed to follow Northwell  
3           policies. If you want me to go through it,  
4           I'll be happy to go through it. I have all  
5           the exhibits labeled. It actually pertains  
6           to the fact that at Northwell we informed  
7           our residents in various exhibits that they  
8           are to be compliant with Northwell Health  
9           policies.

10           The short end of it is that when  
11           Northwell mandated the vaccine and Candice  
12           did not get vacc'd, then she was in breach  
13           of her contract. But if you want me to go  
14           through that, I'll be happy to go through  
15           it.

16           DR. BARONE: I'll ask Dr. D'Cunha. Do  
17           you agree with the dates and timelines of  
18           the letters that Dr. Sottile stated in his  
19           opening statement, that you received letters  
20           given the timeframe? I think October 5th  
21           and October 7th specifically were the dates.

22           DR. D'CUNHA: There was a letter that

1 I initially received on October 1st that was  
2 informing me of termination but it was  
3 backdated to 9/28. On that day -- I was  
4 first told that I was terminated as of that  
5 day, and later on that day I was informed by  
6 Amy Durante that to hold on to my ID, not to  
7 turn it in yet, because as a resident I  
8 might possibly qualify for a later  
9 termination date, but I had no idea what  
10 that date was at the time.

11 I was also informed that I would  
12 probably have access to an appeal.

13 DR. BARONE: Thanks. Do you have  
14 those -- maybe put those letters --

15 DR. SOTTILE: I can clarify that. On  
16 October 5, 2021 Candice was provided a  
17 letter reminding her that she needed to be  
18 vaccinated or she would be terminated on  
19 October 7th. This letter gave her a final  
20 chance to get vaccinated or she would be  
21 terminated. That's Exhibit 11. If you'd  
22 like to pull that up, that's the October 5th

1 letter.

2 MS. BRUNSON: I'm going to share my  
3 screen right now.

4 DR. BARONE: Thank you.

5 MS. BRUNSON: Can everyone see?

6 Dr. Sottile, is this the letter you're  
7 referring to?

8 DR. SOTTILE: This is the letter -- I  
9 can't see the whole thing. But yes, it was  
10 delivered October 5, 2021. That's it.  
11 Correct.

12 MS. BRUNSON: Just tell me to scroll  
13 when you need me to scroll.

14 DR. SOTTILE: You can scroll.

15 So as you're seeing, in paragraph 2 it  
16 explains exactly what we stated.

17 If I can proceed. She did not get  
18 vaccinated as required, and then I gave  
19 Candice a letter dated October 7th advising  
20 her that because she was still not  
21 vaccinated, she was being terminated and  
22 being advised of the adverse action being

1 taken. That's Exhibit 12 dated October 7th.

2 MS. BRUNSON: Is this the letter that  
3 you're referring to?

4 DR. SOTTILE: That's correct. Can you  
5 scroll, please? If you continue to scroll,  
6 my signature should be on the bottom. There  
7 we go.

8 I spoke with Candice on October 8th  
9 when she acknowledged receipt and had an  
10 opportunity to ask questions. That's  
11 Exhibit 13, October 8th acknowledgement.  
12 That's correct.

13 I gave Candice an opportunity to ask  
14 any questions at that particular time. She  
15 did not have any. There really was not much  
16 to discuss. We had been through it, and I  
17 believe Candice knew that termination was  
18 going to happen. There wasn't much more to  
19 say at that particular date.

20 Following that, she requested the  
21 review by e-mail on October 8, 2021, Exhibit  
22 14, which is an e-mail to Amy Durante and



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1           for which I was copied, and she stated her  
2           reasons for her review.

3                     That's correct. You can scroll.

4                     These were the reasons that were  
5           given by Candice for the review.

6                     Dr. D'Cunha was provided a notice of  
7           the review on November 4th, scheduled for  
8           November 22, 2021 at 9 a.m., and I was also  
9           copied. That's Exhibit 15, notice of  
10          review.

11                    That's correct. That's correct.

12                    DR. BARONE: Thank you. Are there  
13          any additional documents you want to share  
14          before we call the witnesses?

15                    DR. SOTTILE: No.

16                    DR. BARONE: Any members of the  
17          committee, anything you particularly want to  
18          see that Dr. Sottile hasn't put up?

19                    (No response.)

20                    DR. BARONE: Okay. Do you want, is  
21          it Dr. Lowe, to come in first?

22                    DR. SOTTILE: I believe so. Dr.

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1           Lowe for the medical exemption and then Ms.  
2           Kahaner will address the religious  
3           exemption.

4                   DR. BARONE: Gus, can we let Dr.  
5           Lowe into the group?

6                   MR. PHILLIPS: Yes, sir. We also  
7           have Ms. Kahaner in the waiting room.

8                   DR. BARONE: Thank you.

9                   Dr. Lowe, welcome.

10                  MR. LOWE: Good morning, everyone.

11                  DR. BARONE: So the Program and the  
12           Resident gave their opening statement. The  
13           Program presented a series of documents  
14           outlining to Dr. D'Cunha the timeline of  
15           adverse actions, and Dr. D'Cunha's document  
16           for her appeal was shown. I think your role  
17           for this committee is to talk about your and  
18           the Program and the system's thought to Dr.  
19           D'Cunha's objection to getting a vaccine  
20           based on a medical exemption.

21                  MR. LOWE: Okay. Dr. Barone, who  
22           else is on the line now? Will I be

1 introduced? Are they on already?

2 DR. BARONE: Everyone is on. We  
3 have myself, the two other members of the  
4 committee, Dr. Sottile and Dr. D'Cunha, and  
5 then the medical transcriptionist and a  
6 couple of people helping with the technology  
7 and the documents.

8 MR. LOWE: Very good. Thank you.

9 DR. BARONE: Do you want to give us  
10 your official title?

11 MR. LOWE: Good morning, everybody.

12 My name is Dr. William Lowe, I am the  
13 medical director for Employee Health  
14 Services with Northwell. I have been in  
15 this role for a little over ten years now.

16 A little bit about my background. I  
17 am board certified in residency training in  
18 occupational medicine with a master's degree  
19 in public health as part of that. Again,  
20 I've been in this role for ten years now.  
21 This is sometimes referred to as Corporate  
22 Employee Health Services. I have not direct

1 oversight but I have advice and guidance to  
2 all the Employee Health Service across the  
3 entire system, which number is seventeen.

4 In regards to the medical exemption  
5 process that was established by Northwell,  
6 that was centered in my office. All medical  
7 exemptions from any employee anywhere in our  
8 health system were sent here to my office,  
9 Corporate Employee Health Service at 410  
10 Bayville Road. This is where we processed  
11 and took the information in regarding their  
12 medical exemption.

13 Under the guidance of our Clinical  
14 Advisory Group, which is a very high senior  
15 level clinical leadership group for  
16 Northwell that has been in place since  
17 January, February of '20 when COVID first  
18 started to become a reality for all of us,  
19 the Clinical Advisory Group was established  
20 under the leadership of our senior vice  
21 president for quality for Northwell, and  
22 that group has been responsible, and I will

1 say for all things COVID, whether they are  
2 all clinical and administrative issues  
3 around COVID. Whether it was a patient care  
4 algorithm, treatment, management of  
5 employees, PPE, all the decision making,  
6 visitors, all the decision making that had  
7 to go around COVID and how that was going to  
8 be managed from an infection prevention and  
9 otherwise was managed by our Clinical  
10 Advisory Group.

11 When the mandate was coming along  
12 and we knew that the mandate was coming, we  
13 were prepared for it. The clinical advisory  
14 group asked myself to establish a committee  
15 that would look at all of our medical  
16 exemption requests that came in. I  
17 established the committee, and that  
18 committee was approved by the senior  
19 Clinical Advisory Group for COVID.

20 So we did a couple things. Dr.  
21 Barone, I did just kind of — I put together  
22 just some documents that I thought the



1           committee -- not a lot, just a handful of  
2           documents that I thought would be germane to  
3           the committee, if they haven't seen them  
4           before.

5                     Document number 1 is just the New  
6           York State mandate. 10 NYCRR 2.61 is the  
7           name of it. That's a document that I do  
8           think that the committee should have a look  
9           at. It's what dictated Northwell's  
10          mandatory enforcement of the State's  
11          mandatory guidelines. It's rather lengthy.  
12          I mean it doesn't have to be read in any  
13          great detail but I do think it's important  
14          that the committee know that this was  
15          established under New York State.

16                    I will tell you Northwell was very  
17          much prepared to -- we were very close to  
18          making a mandate of our own, a system  
19          mandate, but we never got there because the  
20          State sort of preempted the need for that.  
21          We established our mandatory vaccination for  
22          COVID underneath the State guideline.

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1           There's really no particular point here that  
2           I think needs to be pointed out other than  
3           it's several pages of what New York State  
4           established. So I'll just leave it at that.  
5           At some point, if the committee has any  
6           questions to me regarding that, I'll be more  
7           than happy to come back to them.

8           DR. BARONE: Can I ask you one  
9           question? Is there any specific, in the  
10          State guidelines, exemptions, medical  
11          exemptions or criteria for medical  
12          exemptions written in the guidelines?

13          MR. LOWE: There are not. That's a  
14          very good question. There are no criteria  
15          for exemptions. That's something our  
16          Clinical Advisory Group had to manage on its  
17          own. It's a very good question. The State  
18          does not dictate what is or is not a medical  
19          exemption. That's covered very much by the  
20          CDC guidelines, which I'll reference later.

21          DR. BARONE: Thank you.

22          MR. LOWE: You got it.

1                   So folks, the next document that I  
2                   want to show is just to demonstrate that our  
3                   -- let me see here. Document 2, the EHS  
4                   policy. So we rapidly put this State  
5                   mandate into our EHS policy, which is  
6                   Exhibit 2. This outlines, Dr. Barone, all  
7                   the things that we require for Employee  
8                   Health Service, the things you're familiar  
9                   with, measles, mumps, rubella, annual  
10                  testing. Whatever it may be. It's just our  
11                  general Employee Health Service policy. We  
12                  did go ahead and immediately put that into  
13                  our policy. Again, I'm not pointing out any  
14                  particular paragraph or anything. I just  
15                  want the committee to be aware that we did,  
16                  in due diligence, make this part of our  
17                  policy. That would be under section B,  
18                  number 3, COVID vaccination.

19               DR. BARONE: Can we scroll to that,  
20               please? Okay.

21               MR. LOWE: All right. It would be  
22               3-B.

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1 DR. BARONE: Can you go back for a  
2 second? So specifically -- go up a little  
3 more. I saw that proof of -- it had to do  
4 with proof of immunity.

5 DR. LOWE: Right. That would have  
6 been for measles, mumps, rubella.

7 DR. BARONE: Right. I think it  
8 specifically excludes COVID.

9 DR. LOWE: Right. COVID is proof of  
10 adequate vaccination.

11 DR. BARONE: I just want to -- can you  
12 find that again?

13 MS. BRUNSON: I'll scroll. You let me  
14 know where you see it.

15 DR. BARONE: I thought it would be  
16 important based on -- go up a couple more.

17 MR. LOWE: Keep going down.

18 DR. BARONE: I think this is  
19 important. One of Dr. D'Cunha's statements  
20 was about the adequacy of her own natural  
21 immunity. This policy specifically excludes  
22 that as being adequate --

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1 MR. LOWE: It does.

2 Scroll down a little bit more. So  
3 it's proof of adequate vaccination, whereas  
4 measles, mumps, rubella we have adequate  
5 immunity for vaccination. So thank you for  
6 pointing that out.

7 DR. EL-SAYEGH: Does Northwell policy  
8 also state anywhere about any medical  
9 exemption?

10 MR. LOWE: No. It was not in the  
11 policy. That was all handled by procedure,  
12 and that is in the medical exemption  
13 request.

14 DR. BARONE: Okay.

15 DR. LOWE: It was not policy. That  
16 was more procedure than policy.

17 DR. ZWEIFLER: The decision to not  
18 allow immunity, that was debated and a  
19 discussed decision by the committee? Can  
20 you elaborate?

21 DR. LOWE: It was discussed. It was  
22 discussed. I wouldn't say debated. I think



1 the committee was unanimous. The CDC  
2 guidelines clearly -- do not clearly state  
3 that you could be vaccinated following a  
4 history of COVID as long as you're well  
5 enough to be off of quarantine. So very  
6 early on after COVID there are no  
7 contraindications to being vaccinated if you  
8 had a history of COVID.

9 So we can -- I think we're good with  
10 that.

11 I did want to go to Dr. D'Cunha's  
12 medical exemption request. I don't know if  
13 you've already looked at that. I can share  
14 that with you.

15 Dr. D'Cunha, it's kind of HIPAA but I  
16 know it was submitted to the committee. I'm  
17 assuming it's okay with you if I reference  
18 that. Is that correct?

19 DR. D'CUNHA: That's correct.

20 DR. LOWE: I have your permission?

21 DR. D'CUNHA: Yes.

22 DR. LOWE: So folks, here is the

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1 process. It had to be requested by the  
2 employee. The request came from -- it did  
3 come from Dr. D'Cunha.

4 If you could scroll down, Tamira.

5 There is some handwriting there.

6 Folks, I will tell you my office -- you  
7 know, the entire committee took each of  
8 these medical exemption requests very  
9 seriously.

10 You can stop right there, Tamira.

11 That's fine.

12 I personally read everything that came  
13 in from every single request. I looked at  
14 the handwriting, the handwritten notes of  
15 this medical accommodation request, you  
16 know, to try and identify what the medical  
17 concern was. I didn't see a medical concern  
18 here. This mostly spoke to I think some  
19 State laws, some Federal laws and some other  
20 type of concerns. I did not see the medical  
21 concern there.

22 Tamira, if you scroll down, Dr.

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1 D'Cunha did submit medical documentation,  
2 meaning a note from a physician. By the  
3 way, also sent to us was this -- Tamira,  
4 keep going down. This was her antibody  
5 level, greater than 250. This is following  
6 her COVID.

7 DR. BARONE: Can you tell me the date  
8 of this?

9 DR. LOWE: Yes.

10 DR. BARONE: If you scroll up.

11 DR. LOWE: It looks to be --

12 DR. BARONE: 8/3. Okay.

13 DR. SOTTILE: Is there a statement  
14 from her OB/GYN that he is in agreement with  
15 Candice not receiving the vaccine?

16 DR. LOWE: No. Quite the contrary.  
17 Right here, this is the doctor's note. So  
18 this is from Dr. Christopher LaPorta. I'll  
19 read it. Dr. D'Cunha, date of birth,  
20 (redacted), is currently under my care for a  
21 current pregnancy EDC 3/6/22. She currently  
22 resides at 363 Graves Avenue, Staten Island

1           10314. COVID antibodies on 8/3/21 greater  
2           than 250. Request delaying administration  
3           to after delivery. I attest that I am not  
4           related to this patient. Thank you for your  
5           consideration in this matter.

6           DR. SOTTILE: That delay in  
7           administration until after her due date, was  
8           that considered?

9           DR. LOWE: So our committee looked at  
10          the issue of pregnancy -- the Clinical  
11          Advisory Group looked at the issue of  
12          pregnancy very seriously. Again, we looked  
13          for the -- primarily to the CDC. There is  
14          no contraindication to being vaccinated  
15          during pregnancy. We felt as though if we  
16          were going to follow the CDC guidelines, we  
17          were going to follow the CDC guidelines for  
18          all groups that the CDC guidelines address,  
19          including people who are pregnant,  
20          undergoing fertility and/or lactating. The  
21          CDC clearly states that it is not only a  
22          contraindication but it's a recommendation.

1                   Folks, given any issue that may come  
2                   up within the CDC guidelines, if we look to  
3                   either support or contradict what the  
4                   guidelines were saying, we would turn to a  
5                   professional — the professional  
6                   organization that's most universally  
7                   recognized as the entity to be an expert in  
8                   that area. So we looked at guidelines from  
9                   the American College of Rheumatology if  
10                  there was a rheumatology related, American  
11                  Allergy, American College of Obstetricians  
12                  and Gynecologists. We looked at all those  
13                  professional guidelines. So although the  
14                  CDC was our primary document, very well  
15                  written, very extensive, really looking to  
16                  see what is a contraindication, why  
17                  shouldn't somebody be vaccinated, I don't  
18                  want to say that we only looked at the CDC  
19                  guidelines. We did look for outside  
20                  expertise, and of course we also looked  
21                  inward. At Northwell we have incredible,  
22                  incredible medical expertise in our health

1           system. We brought in experts from within  
2           our own health system and sought guidance  
3           from them when we thought it was necessary.

4           DR. ZWEIFLER: After this letter are  
5           there more documents or that was the end of  
6           the medical exemption request?

7           DR. LOWE: That was the end of --  
8           there is a -- there's an e-mail I have from  
9           Dr. D'Cunha on September 23rd. It's more of  
10          the same, quite frankly. I don't really  
11          think there's anything different or unique  
12          in here. It's basically a personal note --  
13          in my opinion, a personal note about her  
14          disappointment and things along those lines.  
15          My office received no further medical  
16          documentation, anything that was different.

17          DR. D'CUNHA: Dr. Lowe, may I just  
18          point out a few things? You mentioned that  
19          in my medical accommodation request, that I  
20          did not state anything about pregnancy. In  
21          my handwritten note, one of the first things  
22          I say in there is I understand all of the



1           foregoing to reference and be in accord with  
2           current State and Federal law regarding  
3           pregnancy and/or disability and reasonable  
4           accommodation in the workplace. I did  
5           mention the fact about pregnancy. There's  
6           also the note from my physician stating that  
7           I am pregnant. The e-mail that I provided  
8           with regard to my re-appeal shared a lot of  
9           articles and a lot of papers and studies  
10          that were done which indicated that there  
11          was still an ongoing effort to establish the  
12          safety of the vaccine in pregnant women.  
13          All four package inserts for all four  
14          vaccines that are currently available  
15          mention the fact that you need to discuss  
16          this with your OB. They also mention  
17          enrolling in a clinical trial in order to  
18          continue monitoring women to see the side  
19          effects. The various data websites posted  
20          close to 3,000 miscarriages. So I'm not  
21          entirely sure where the safety establishment  
22          has been declared in terms of pregnancy.

1 DR. LOWE: Noted. I've established  
2 that the guidelines that the committee  
3 followed, there is no contraindication to  
4 pregnancy, and that was the standards by  
5 which we moved forward to the highest levels  
6 of the organization.

7 DR. EL-SAYEGH: Can you share with us  
8 the CDC that you just mentioned about  
9 medical exemption, or what you referred to  
10 earlier?

11 DR. LOWE: So it's the CDC -- it's the  
12 interim clinical considerations for the use  
13 of COVID-19 vaccination. It's rather  
14 lengthy.

15 DR. BARONE: Did you submit that to  
16 the committee?

17 DR. LOWE: Actually, I did not. I  
18 mean it's -- it's easily available online.  
19 If you'd like, I could get this to the  
20 committee.

21 DR. BARONE: I think just the section  
22 in regard to pregnancy may be useful to the

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1 committee.

2 DR. LOWE: Okay. Is that something  
3 you want me to pause and work on now to get  
4 to you or we can get it to you after this?

5 DR. BARONE: I think you can get it --

6 DR. LOWE: How would I get something  
7 to the committee? I do have somebody in my  
8 office that can help send stuff over.

9 DR. BARONE: Why don't we try to work  
10 on getting it before the meeting ends, this  
11 way we can make sure everyone was privy to  
12 that. Again, all I need is really the  
13 section. Maybe you can PDF the section on  
14 pregnancy.

15 DR. LOWE: How can I get it to you?

16 DR. BARONE: Tamira, is there a way he  
17 can e-mail that to you, a PDF, and you can  
18 share it?

19 MS. BRUNSON: Dr. Lowe, do you have my  
20 e-mail address, or do you want me to e-mail  
21 you and you can reply?

22 DR. LOWE: Yes. Also e-mail it to

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1 Tracy Striano, please.

2 MS. BRUNSON: Okay.

3 DR. BARONE: Thank you.

4 John, this is your witness. Is there  
5 anything else you want Dr. Lowe to try to  
6 comment on?

7 DR. LOWE: Dr. Barone, I don't mean to  
8 interrupt. This will be the section here.  
9 Can you read that? I will ask my secretary  
10 -- my administrative assistant to send it  
11 over to you folks. It's consideration  
12 involving pregnancy, lactation and  
13 infertility. Okay.

14 DR. BARONE: Terrific.

15 DR. LOWE: I can pause and ask her to  
16 start working on that or I can stay with  
17 you.

18 DR. SOTTILE: I'm just wondering if  
19 there was any communication between EHS and  
20 Dr. LaPorta regarding a decision and any  
21 feedback from Dr. LaPorta, or was that just  
22 end of story?

1 DR. LOWE: So folks, Northwell in  
2 general did a lot of education of physicians  
3 across the health system to sort of counter  
4 what we considered -- what we considered to  
5 be not the standard for our Northwell  
6 patients. You have to understand, most --  
7 not all, not all exemptions came from  
8 Northwell Health. We didn't have that kind  
9 of reach. We do have the weekly chief  
10 medical officer update. It's almost an hour  
11 long. That goes out to all the physicians.  
12 We did a lot of education on that. Letters  
13 from the chief medical officer. Really,  
14 quite frankly, asking physicians to stick by  
15 known guidelines and expertise.

16 So there were literally hundreds,  
17 hundreds of medical exemption requests  
18 across all sorts of different reasons.  
19 Individually that would have been almost  
20 impossible to do. We did recognize as a  
21 committee that there needed to be a lot of  
22 education of our Northwell physicians, and

1           we did that through the chief medical  
2           officer. So I don't know of an individual  
3           conversation, it didn't come from me of an  
4           individual conversation, with any physician  
5           with perhaps one or two exceptions where I  
6           needed to speak to them in order to --  
7           pregnancy and history of COVID was a very  
8           common request. Our committee had looked at  
9           many, many of these. We universally decided  
10          that pregnancy, without some other medical  
11          thing that would make us question it, in and  
12          of itself was not a contraindication, and  
13          again was supported by CDC, ACOG, our  
14          obstetrical leadership. And history of  
15          COVID. Those are two things that really  
16          weren't even that challenging for the  
17          committee because we felt as though there  
18          was so much good guidance out there, solid  
19          clinical guidance, that that didn't really  
20          need individual -- I didn't really -- we  
21          didn't really need to hear other opinions on  
22          that was our position. Okay.



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1 DR. D'CUNHA: I just have one last  
2 question. What is the purpose of  
3 vaccination? The COVID-19, what is the  
4 purpose of it?

5 DR. LOWE: Dr. Barone, is this -- I'm  
6 not -- I'll answer if you'd like me to but I  
7 don't know the point of it right now, quite  
8 frankly.

9 DR. BARONE: Just a short answer. I  
10 think since I'm going to -- you're going to  
11 leave the committee, I think it's just --  
12 it's due process to let Dr. D'Cunha at least  
13 ask you a question or two.

14 Dr. D'Cunha, I'm not going to let you  
15 get into a big debate.

16 DR. LOWE: I would say particularly in  
17 this setting of a global pandemic in a  
18 healthcare institution where we are  
19 absolutely responsible for the safety of our  
20 patients, the purpose of the vaccine --  
21 mandatory vaccine for healthcare workers and  
22 Northwell's desire and obligation to enforce

1           that mandate was about keeping our patients  
2           safe. I will end my comments there.

3           DR. BARONE: Dr. Lowe, I just want to  
4           -- you brought this up as a question in my  
5           mind. I just want to reemphasize it so I'm  
6           just a hundred percent crystal clear. In  
7           general, all requests for deferral of  
8           vaccine based on pregnancy or prior immunity  
9           were --

10          DR. LOWE: Declined.

11          DR. BARONE: -- declined? Would that  
12          be a fair statement?

13          DR. LOWE: I would say there were  
14          many, many, many, many in each of those  
15          categories, and they were universally  
16          declined as a reasonable medical exemption  
17          based on the data that we have. So yes.

18          DR. BARONE: Okay. Dr. Sottile,  
19          anything else for Dr. Lowe?

20          DR. SOTTILE: No. We can bring on  
21          Vicki Kahaner.

22          DR. BARONE: Dr. D'Cunha, anything --

1 I don't want to get into a debate of science  
2 here. Anything in regards to process or  
3 anything else you want to ask Dr. Lowe  
4 about?

5 DR. D'CUNHA: No. That's fine. We'll  
6 get -- because the whole reason for getting  
7 the vaccine, the COVID-19 vaccine, is to  
8 establish antibodies. When you acquire  
9 COVID, you have antibodies. I don't  
10 understand why that is not accepted. But as  
11 Dr. Lowe mentioned, anybody who has had  
12 COVID and who is pregnant was denied. I  
13 will leave it at that.

14 DR. BARONE: I just wanted to  
15 establish that you weren't singled out for  
16 any reason. That's what I wanted to make  
17 clear to myself in my mind, that that was  
18 kind of the policy.

19 DR. BARONE: Committee members,  
20 anything else for Dr. Lowe before I let him  
21 go?

22 DR. EL-SAYEGH: Dr. Lowe, did you

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1 request from Dr. D'Cunha to get you more  
2 medical evidence why she needed to be exempt  
3 from the vaccine or her request was declined  
4 and that was it?

5 DR. LOWE: I'm sorry, Doctor. I  
6 apologize. I don't fully understand the  
7 question.

8 DR. EL-SAYEGH: Based on the letter  
9 that was submitted by the OB/GYN, did you  
10 feel that she needed -- you needed or the  
11 committee needed more information why she's  
12 to be exempt from the vaccine besides the  
13 fact that she's pregnant and she did not  
14 provide you with this information or the  
15 sole reason --

16 DR. LOWE: No. I would say honestly,  
17 honestly -- again, we had so many of these  
18 very similar pregnancies with a history of  
19 COVID or just a history of COVID. We had  
20 debated that so many times and we had such  
21 tremendously solid guidelines. I mean ACOG  
22 strongly recommended -- I mean the language

1 is very clear. CDC, the language is very  
2 clear, strongly recommend. I didn't feel it  
3 was necessary in this particular case to go  
4 back and establish anything with this  
5 doctor. There was no detail. There was no  
6 further decision making that really needed  
7 to be here from our opinion. Both of these  
8 were, as I said, common, and they were  
9 denied as medical exemptions to the  
10 vaccination almost universally.

11 DR. BARONE: Okay. Thank you, Dr.  
12 Lowe.

13 DR. LOWE: I'm going to be sending  
14 this to you right now.

15 DR. BARONE: I appreciate it.

16 DR. LOWE: Procedurally I'm going to  
17 stay -- I'll go back to the waiting room and  
18 wait to hear from you or am I done?

19 DR. BARONE: Would it be -- can you do  
20 other work while you're in the waiting room?

21 DR. LOWE: Absolutely. Absolutely.

22 DR. BARONE: I don't think I'll need



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1 to recall you but I would appreciate you  
2 hanging around while you do your other work  
3 just in case.

4 DR. LOWE: If I'm gone -- I'm in the  
5 clinic today, as you can tell by my dress.  
6 We're a skeletal staff. I'm trying hard to  
7 get my staff out on some vacation after all  
8 this time. I'm going to pop my head in the  
9 clinic. I'll be checking very, very  
10 frequently.

11 DR. BARONE: I appreciate your time.

12 DR. ZWEIFLER: Can I ask a final  
13 question?

14 DR. BARONE: Sure.

15 DR. ZWEIFLER: I'm just curious. It  
16 sounds like, if I understand correctly, that  
17 Dr. D'Cunha presented some articles or some  
18 data about miscarriages in pregnancies. Did  
19 the committee review the data she presented  
20 and look at that or -- I don't know if I'm  
21 understanding exactly what happened with  
22 that evidence you guys looked at.

1 DR. LOWE: So again I'm going to go  
2 back to what we used to look or to see if  
3 there was a guidance of the recognized  
4 entities. Again, that was the American  
5 College of Obstetricians. Even the Maternal  
6 Fetal Society. If you started going out  
7 into the internet sphere to look for a  
8 reason not to get vaccinated, you could find  
9 it. We really felt as though this had to be  
10 based on truly the established guidelines  
11 and those well recognized, respected  
12 professional entities. Again, there's so  
13 much information out there. I'm not going  
14 to say necessarily misinformation, but a lot  
15 of it is misinformation that -- we did not  
16 take every article or every internet site or  
17 every -- everything that somebody could find  
18 out there back to the committee for  
19 discussion. We did not feel as though that  
20 was an approach for us enforcing a State  
21 mandate, for not just pregnancy but for  
22 anything.

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1 DR. SOTTILE: But your committee did  
2 look into the validity of those particular  
3 articles that Candice sent? Was that looked  
4 into or were they just discarded? Were  
5 those articles looked at and the validity of  
6 those articles?

7 DR. LOWE: They were. They were  
8 reviewed by the committee, but I would not  
9 use your terminology of discarded.  
10 Honestly, if it wasn't from one of the  
11 recognized -- I don't know what society --  
12 the recognized society of podiatric surgery,  
13 or whatever that may be. You really could  
14 tell from the outset that -- those were the  
15 guidelines that we used. The term  
16 discarded, like I said, I read everything  
17 that came in. Everything was sent to the  
18 committee, so --

19 DR. SOTTILE: Thank you.

20 DR. BARONE: Thank you.

21 Okay. So I'm going to ask Dr. Lowe to  
22 be removed from the meeting. He's going to

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1 remain on standby.

2 Can we, Gus, put the next witness up?

3 MR. PHILLIPS: Dr. Lowe, if you look  
4 at the bottom of your screen there will be a  
5 breakout room icon.

6 DR. LOWE: I do not see that.

7 MR. PHILLIPS: Do you see the invite  
8 now?

9 DR. LOWE: I see there's a drawing of  
10 an icon for the head and shoulders. Maybe I  
11 should move my picture.

12 MR. PHILLIPS: Give me one second.

13 I'll close the rooms and then I'll reassign  
14 you.

15 Do you want me to wait before I let in  
16 Ms. Kahaner?

17 DR. BARONE: No. You can let her in  
18 right away.

19 (Whereupon, an off-the-record  
20 discussion was held.)

21 DR. BARONE: Ms. Kahaner, can you  
22 spell your name for the court reporter?



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1 MS. KAHANER: K-A-H-A-N-E-R.

2 DR. BARONE: Can you give her your  
3 title, please?

4 MS. KAHANER: Absolutely. I'm vice  
5 president of Employee Relations for  
6 Northwell Health.

7 DR. BARONE: I understand you're here  
8 because you helped make determinations or  
9 you and others helped make determinations on  
10 religious exemption requests in regard to  
11 the COVID-19 vaccine mandate.

12 MS. KAHANER: Correct. Part of my  
13 team is the Advice and Council Center. The  
14 Advice and Council Center is a centralized  
15 department that manages employee relation  
16 issues throughout the organization, such as  
17 disciplinary, advice for managers,  
18 investigations, as well as accommodation  
19 requests that come in.

20 DR. BARONE: Okay. Dr. Sottile, do  
21 you want to ask your witness any questions  
22 or let her make a statement? It's your

1 witness.

2 DR. SOTTILE: I think, Vicki, if you'd  
3 like to make a statement to inform us  
4 exactly what Dr. D'Cunha's religious  
5 exemption request was.

6 MS. KAHANER: Sure. Do you want me to  
7 go to her request or do you want me to go  
8 through the process that we --

9 DR. SOTTILE: You can go through the  
10 process. Thank you.

11 MS. KAHANER: Sure. So I want to  
12 start first with where we were as an  
13 organization in regard to the mandate and  
14 the religious exemptions.

15 Tamira, I think you have an Exhibit 5.  
16 If we want to put that up. Exhibit 5 is a  
17 series of e-mails that are dated between  
18 August 2nd and October 4th. So in total  
19 there are eight e-mails in here that were  
20 sent, some to the entire organization and  
21 some to those that were just not vaccinated.  
22 So very quickly I'll take you through the

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1           dates of each of the letters in the order  
2           that they are listed in Exhibit 5.

3           August 2nd was an e-mail that was sent  
4           to all team members informing them that we,  
5           as an organization, are mandating the  
6           vaccine, and that mandate will be in effect  
7           as of August 16th. Failure to be vaccinated  
8           would lead to weekly PCR testing. And so  
9           that was the first announcement that went  
10          out, and that was sent by Michael Dowling  
11          and Mark Solazzo.

12          The second letter was dated August  
13          10th. These were all sent by e-mail to  
14          employees' e-mail addresses in the  
15          organization. The August 10th was sent to  
16          those team members that were still not  
17          vaccinated, reminding them that we have a  
18          mandate in place effective August 16th, and  
19          failure to be vaccinated by that date would  
20          lead to weekly PCR testing, just putting it  
21          out there one more time to them.

22          Then the third letter is August 18th,

1           and this was sent right after the State  
2           mandate was announced. It was informing our  
3           team members about the State mandate, and  
4           PPE, and the date of the requirement to have  
5           the vaccine as per the State mandate, as  
6           well I think in here we give information  
7           about how to get the vaccine. We might also  
8           in here talk about the PCR testing that has  
9           to be done by everyone between that date and  
10          the 27th.

11                 Then there was a September 3rd e-mail  
12          that was a reminder e-mail about the testing  
13          requirement and the vaccine requirement. A  
14          lot of similar information. That went out  
15          on September 3rd.

16                 September 15th we sent out another  
17          e-mail because there seemed to have been a  
18          lot of confusion in regards to a temporary  
19          restraining order that the court had issued  
20          in regard to religious exemptions. We  
21          wanted to inform the team members that we  
22          will be compliant with the law and tried to



1 explain exactly what that temporary  
2 restraining order meant. A lot of people  
3 were under the impression that the mandate  
4 was put on hold, so we were making an  
5 attempt to make sure that everybody was  
6 aware it was still 9/27 as to the date that  
7 it must be complied with, that we were  
8 continuing to receive religious  
9 accommodation requests and that we would be  
10 determining what we would do for those as  
11 time moved forward.

12 The next e-mail that was sent was on  
13 the 21st of September, and this was  
14 announcing to all team members what our  
15 operational plans were as we approached the  
16 9/27 deadline date and to ensure everybody  
17 -- to ensure everybody that we had a plan in  
18 place and we were ready operationally to  
19 deal with anything that might come about.

20 The 9/28 e-mail was informing team  
21 members that were not vaccinated that the  
22 termination -- if failure to get the

1           vaccination at that point was going to be  
2           leading to termination, and announcing also  
3           that we had terminated several leaders  
4           already for not being vaccinated.

5                   And then on the 4th -- the final  
6           e-mail in this packet was on October 4th  
7           informing everybody that we had reached a  
8           hundred percent compliance with the vaccine  
9           mandate and the only outliers for those  
10          would be pending exemption requests. I'm  
11          not sure if that's in the e-mail but that  
12          was our position at that point in time.

13                   So that's Exhibit 5. You'll have the  
14          opportunity to read those, I'm sure, after  
15          this hearing.

16                   We had put a plan in place as to how  
17          we would manage religious exemptions. We  
18          had created a form that could be utilized by  
19          individuals requesting religious exemption.  
20          That form was to be given to their local  
21          site HR who would then forward it to the  
22          Advisory Council Center, which is my team.

1           We would open up a case and we would manage  
2           it going forward from there.

3           We had many discussions with senior  
4           leadership as well as the clinicians, the  
5           top clinicians in the organization, about  
6           how we wanted to manage religious exemption  
7           requests and what the law required. What we  
8           talked about was the safety of our patients  
9           and the rest of the team members to have  
10          unvaccinated individuals continue to work in  
11          the workplace, and felt that we were putting  
12          people at risk unnecessarily. So the  
13          decision was that anybody that put in a  
14          religious exemption request at that point,  
15          meaning after the TRO was issued, we would  
16          be denying those requests that came in for  
17          anybody that was patient facing or that we  
18          believed would be putting others at risk if  
19          they continued to work in the workplace. So  
20          that was a decision that came about after  
21          significant discussion as to the protection  
22          that we wanted to give our patients and the

1 expectation our patients had.

2 So I think, Tamira, if you can put up  
3 Exhibit 6.

4 Exhibit 6 will show you the form  
5 itself that we asked everybody to fill out.  
6 This is the resident form that was signed on  
7 September 3rd. I don't believe my team  
8 received it for a couple weeks. I'm not sure  
9 where the delay might have been, but we  
10 received it on the 30th of September and  
11 opened a case. You can see in here that she  
12 changed some of the language, or, you know,  
13 wrote some additional language on to the  
14 team acknowledgement.

15 If you scroll down you will see her  
16 specific -- on the next page will be her  
17 specific request for a religious exemption.  
18 I'm sorry. It must be the third page. So  
19 on the third page she describes why she's  
20 objecting on religious grounds for the  
21 religious -- why she's requesting the  
22 religious exemption, and she sets forth her

1 objection to have any vaccine that had fetal  
2 cells involved in the development of it. So  
3 this is what we had from her and this is  
4 what we accepted from her.

5 Then what I can say is that we  
6 accepted her statements as legitimate. We  
7 did not -- we did not pushback or object to  
8 what she was saying. We took it as fact  
9 that she did have a sincere health belief,  
10 and then we moved on to the next part of the  
11 analysis which was would it create an undue  
12 hardship.

13 And then, Tamira, if you can put up  
14 Exhibit 7.

15 Exhibit 7 is the religious exemption  
16 denial that my team sent out on behalf of HR  
17 informing her that we had received it. We  
18 talk about the State mandate in there and we  
19 talk about why we are denying it, which was  
20 that we believed it created an undue  
21 hardship because she is patient facing and  
22 dealing directly and caring for patients,



1           which was consistent with the determination  
2           that we made as an organization to what  
3           would constitute an undue hardship for us.  
4           This was dated on October 1st. I'm not sure  
5           when she received it but it was likely that  
6           the e-mail went out with this attached on  
7           October 1st. That was the denial.

8                         So that was our process and that  
9           was the timeframe. I'm not sure exactly  
10          what occurred after that. I wasn't involved.  
11          This was the religious exemption process.

12                        I'd be happy to answer any questions.

13                       DR. SOTTILE: I have a question. Did  
14          you consider Dr. D'Cunha's religious  
15          exemption based on her individual request or  
16          had you already made up your mind that  
17          Northwell was no longer accepting any  
18          religious exemptions and that she was going  
19          to be predetermined to be denied?

20                       MS. KAHANER: No. We accepted -- so  
21          there was a period of time where the State  
22          had indicated that they would not be

1           permitting religious exemptions. That was  
2           in August. At that point in time we were  
3           denying religious exemptions because the  
4           State said they would not be permitting  
5           them. Then the temporary restraining order  
6           was issued in December, and so anybody that  
7           had received a denial was reconsidered based  
8           on the fact that there was a temporary  
9           restraining order issued. So the  
10          determination was made pursuant to the  
11          guidance by the courts on religious  
12          exemptions as to once you determine that  
13          it's sincerely a health belief, as I stated  
14          earlier we took the position it was a  
15          sincere health belief, we would consider it  
16          under the guidance of the EEOC and the  
17          Federal courts as to whether or not an undue  
18          hardship would be presented if we were to  
19          grant it. It was determined that clinicians  
20          that were patient facing, anybody that was  
21          unvaccinated in that scenario would create  
22          an undue hardship. So we did consider it

1           fully and consistent with the guidance by  
2           the courts.

3           DR. SOTTILE: Did you accept any  
4           religious exemptions from any physician or  
5           resident fellow in direct patient contact?

6           MS. KAHANER: So we accepted the  
7           submission, but anybody that -- again,  
8           anybody that had direct patient contact  
9           would have been denied regardless of title.  
10          It would have been physicians, nurses, PCAs.  
11          Anybody that was going to be dealing  
12          directly with patients was denied.

13          DR. SOTTILE: Thank you.

14          DR. BARONE: What is the current state  
15          of affairs in regards to religious  
16          exemptions in New York, you know, by the  
17          courts?

18          MS. KAHANER: So the Second Circuit  
19          issued a determination in regard to two  
20          cases. I don't know exactly, you know, what  
21          date it was issued. Essentially it  
22          supported the position that we took in

1           regard to anybody that is dealing directly  
2           with patients would be creating an undue  
3           hardship if they were not vaccinated. I  
4           know that there is language in the Second  
5           Circuit decision that does support the  
6           position that we did take.

7           DR. BARONE: Would you say that your  
8           -- I don't know if these are the right words  
9           -- your hands are tied by the State, that  
10          you really don't have an option of offering  
11          religious exemptions?

12          MS. KAHANER: I wouldn't say that. I  
13          think that as an organization we had come to  
14          that conclusion prior to the court issuing  
15          that decision. When the decision was issued  
16          we felt very validated because it was the  
17          same reasoning that we went through as to  
18          make those determinations. So I would say  
19          that our decision was supported by the  
20          courts.

21          We are still reviewing religious  
22          exemptions that are currently pending for

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1           those people that are not patient facing.

2           So we are still reviewing some. There are  
3           still some that are pending out there.

4           I don't know if that answered your  
5           question or not.

6           DR. BARONE: It does. I don't know if  
7           -- is the State mandate, again for receiving  
8           the COVID vaccine, only for patient-facing  
9           employees or is it for all?

10          MS. KAHANER: It's for people that  
11          work in covered entities. Covered entities  
12          are Article 28s. There's a whole list of  
13          what is considered a covered entity. Then  
14          the covered personnel are those that work  
15          within the covered entities.

16          DR. BARONE: I got it.

17          MS. KAHANER: That's the State  
18          mandate. Our mandate was for every employee  
19          within Northwell regardless of whether or  
20          not they were in a covered entity pursuant  
21          to the State mandate.

22          DR. BARONE: Dr. Sottile, any



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1 additional questions?

2 DR. SOTTILE: No, thanks. None for  
3 me. Thank you.

4 DR. BARONE: Committee members?

5 DR. ZWEIFLER: No.

6 DR. BARONE: Dr. D'Cunha, since I'm  
7 going to let the witness leave in a second,  
8 do you want to ask her a question?

9 DR. D'CUNHA: I just want to clarify  
10 with regard to the blurriness in regards to  
11 my religious exemption submittal. I had  
12 actually submitted it in the first week of  
13 September. On September 30th I was  
14 contacted by Kate Rafla who told me that  
15 they could not find my religious exemption.  
16 I had turned it in to the Northwell Health  
17 site HR office. I was told at the time that  
18 religious exemptions weren't being accepted  
19 but that a copy of my religious exemption  
20 was made and that it will be kept with my  
21 file. So then I was reached out to on  
22 September 30th by Kate Rafla. I had no idea

1           that my copy of my religious exemption had  
2           been misplaced. I had sent it to her late  
3           that evening via fax. It was sent to Kate  
4           Rafla, and then the very next day, in the  
5           morning, in the middle of seeing patients, I  
6           received an e-mail saying that my religious  
7           exemption was denied and within the hour I  
8           was told that I would be terminated as of  
9           that day.

10                 So I just wanted to clarify that  
11            timeline because that part was not known.

12                 MS. KAHANER: And that would be  
13            correct. I just want to add that at the  
14            time on the 3rd we were not accepting  
15            religious exemptions because a TRO had not  
16            yet been issued and the State had said that  
17            no religious exemptions would be permitted.  
18            That makes sense that the site would not  
19            have forwarded it to my office. Then when  
20            things opened up again after the TRO, there  
21            were some individuals that had requests that  
22            didn't make it in, but eventually every

1 request did make it to us and was  
2 considered.

3 DR. BARONE: Thank you. Is it  
4 possible that you can hang out in the  
5 waiting room in case we need to recall you?  
6 I don't know if I need to. I don't know if  
7 you have another place you need to go to.

8 MS. KAHANER: I am fine to hang out  
9 for a least another hour, hour and fifteen  
10 minutes.

11 DR. BARONE: Good. I don't think it  
12 will be longer than that. I appreciate you.  
13 Go do your work and we'll recall you in case  
14 there's any clarifying issues we need.

15 MS. KAHANER: Thank you very much.

16 DR. BARONE: I appreciate it.

17 Dr. Sottile, any other witnesses or  
18 comments or anything you want to show the  
19 committee?

20 DR. SOTTILE: No. I think we have all  
21 the facts on the table. There's not much to  
22 discuss here. It was a mandate, and

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1           unfortunately Candice did not follow that  
2           mandate so we had to pursue this as an  
3           adverse action -- unusual adverse action.  
4           It has to be taken as an adverse action if  
5           we're not following the policy. So I have  
6           nothing further.

7           DR. BARONE: Thank you.

8           Do any committee members have anything  
9           to ask Dr. Sottile in regards to his  
10          presentation?

11          DR. EL-SAYEGH: I just have a quick  
12          question. Which exemption was filed first,  
13          the religious one or the medical one?

14          DR. D'CUNHA: The religious one first  
15          and then the medical one after that.

16          DR. EL-SAYEGH: Thank you.

17          DR. BARONE: Okay. So I think we turn  
18          the meeting now to Dr. D'Cunha. You now  
19          have the opportunity to present witnesses or  
20          documents that you want to share that  
21          haven't been shared with the committee  
22          already.

1 DR. D'CUNHA: So I don't have any  
2 witnesses. As far as some of the links and  
3 the things that I spoke about earlier in my  
4 earlier statement, I can send that over to  
5 Tamira once I get her e-mail address. I can  
6 send that over so you can have that to look  
7 over. I can also send you the links to the  
8 articles that I did talk about in my medical  
9 exemption re-appeal. I do think if we're  
10 going to accept some studies but neglect  
11 others, then that's not really looking at  
12 the science itself. It's kind of being  
13 biased in that regard. If we're looking at  
14 articles, we need to consider all articles.  
15 We need to look at the various data. Once I  
16 get Tamira's information, I can send all of  
17 those things over.

18 With regard to the decision that  
19 Northwell has currently taken terminating my  
20 employment and my training, it just -- right  
21 now, as of this point in time, it feels that  
22 if you have a religious belief and if you



1           are pregnant, you are not being considered  
2           as a person or as an individual. You are  
3           being considered as a number, as somebody  
4           who can only do harm to patients.

5                   Last year, before the vaccines were  
6           there, we all worked without a vaccination.  
7           We took precautions, we worked and we did  
8           the best we could, and I did that again  
9           while being pregnant.

10                   To me it's not a very difficult  
11           situation to see that yes, there was a  
12           mandate put out, but we don't treat  
13           individuals based on a general assumption.  
14           For instance, we see a lot of diabetic  
15           patients. Not every single diabetic patient  
16           that comes in gets the same medication to  
17           control their blood sugar levels. Everybody  
18           is different and they get different  
19           medications or different cocktails of  
20           medications based on their individual health  
21           and based on the fact that that's how we  
22           treat and go about in medicine.

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1                   The fact that I am questioning things.  
2                   The fact that I'm saying look at me as an  
3                   individual and treat me as a human being is  
4                   not being taken into consideration. I ask  
5                   for you to take that into consideration when  
6                   making your decision.

7                   DR. BARONE: Thank you.

8                   DR. SOTTILE: I would just like to add  
9                   that Dr. D'Cunha was in good standing. She  
10                  had completed all of her milestones  
11                  successfully through her PGY one year. She  
12                  was a good resident and was here working  
13                  throughout the COVID during the deployment.  
14                  So I would just like to add that, that, you  
15                  know, she -- her qualifications and her  
16                  milestones were all met and there was no  
17                  problem ever with Dr. D'Cunha.

18                  DR. BARONE: Thank you.

19                  MS. BRUNSON: Dr. D'Cunha, is your  
20                  e-mail address candiceres90@gmail.com?

21                  DR. D'CUNHA: Yes.

22                  MS. BRUNSON: I just e-mailed you my

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1 information.

2 DR. D'CUNHA: I will send everything  
3 over.

4 DR. EL-SAYEGH: Just one question.

5 DR. BARONE: Okay. Tamira, do you  
6 have that CDC document yet that Dr. Lowe was  
7 going to send over?

8 MS. BRUNSON: I just got it. Do you  
9 want me to pull it up?

10 DR. BARONE: Don't pull it up yet. I  
11 think we have a question. Be ready in a  
12 second.

13 Did you have a question, Dr.  
14 El-Sayegh?

15 DR. EL-SAYEGH: Yes. Did Employee  
16 Health share with you the articles and the  
17 guidelines from ACOG and from the CDC that  
18 they followed to make that decision of  
19 declining your medical exemption?

20 DR. D'CUNHA: Are you asking if I was  
21 sent any of those articles? No, I wasn't.

22 DR. BARONE: Okay. Tamira, can you

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1 put up that article just so we can have it  
2 on the record that we viewed it?

3 I think we have to scroll down to -- I  
4 think it's a big -- I'm looking for  
5 something with -- right there. Good. Go up  
6 a little bit so we can just read the first  
7 paragraph. Scroll back up a little bit.  
8 Thanks. Scroll up a little bit to the  
9 pregnancy section. Continue to scroll. You  
10 can continue to scroll, please. Thank you.

11 Dr. D'Cunha, can I ask you a question?  
12 Have you received what would be considered  
13 routine vaccines in the past?

14 DR. D'CUNHA: Yes.

15 DR. BARONE: So like flu vaccines, all  
16 the other ones that --

17 DR. D'CUNHA: Last year I declined the  
18 flu shot because I was pregnant. So I  
19 declined the flu vaccine then.

20 DR. BARONE: Traditionally you get the  
21 flu vaccine and the DTaP and the other ones?  
22 I guess I would refer to them as traditional

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1 vaccines.

2 DR. D'CUNHA: Yes.

3 DR. BARONE: You can stop screen  
4 sharing, please. Thanks, Tamira. It makes  
5 it easier for me to see everyone's face.

6 You said you had a previous child?

7 DR. D'CUNHA: Yes. I had my first  
8 child October of last year. I'm currently  
9 pregnant with my second child.

10 DR. BARONE: Does this pregnancy  
11 differ in regards to -- I guess I assume  
12 your first child -- your first pregnancy  
13 was, I don't want to use the word routine.

14 DR. D'CUNHA: Yes.

15 DR. BARONE: I would assume the second  
16 pregnancy, again and please excuse my term  
17 routine, but I know being pregnant is not a  
18 routine thing.

19 DR. D'CUNHA: Right. So far  
20 everything, by the grace of God, has been  
21 fine.

22 DR. BARONE: Okay, good. And if you



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1           weren't pregnant would you have elected to  
2           receive the vaccine?

3           DR. D'CUNHA: My religious belief does  
4           not want me to do that. I have been a  
5           practicing Catholic my entire life. Ever  
6           since I have learned of the involvement of  
7           aborted fetal cells in the use of the  
8           vaccine production or in terms of testing, I  
9           have tried to stray away from those vaccines  
10          and find ethical alternatives, not only for  
11          myself but for my first born. Whenever a  
12          reason arises to wait to the ethical vaccine  
13          comes out, I will be waiting until an  
14          ethical vaccine comes out. So I am against  
15          the fact that children who are unborn and  
16          have no say in the matter have been used  
17          without their information, without their  
18          consent in the production of vaccines. It  
19          doesn't feel right to me. It doesn't sit  
20          well with my religious practices or my  
21          beliefs. I wouldn't get it either way.

22          DR. BARONE: So if -- I think your

1 OB/GYN's statement said delay vaccine until  
2 after you're not pregnant.

3 DR. D'CUNHA: He mentioned delay.  
4 That was based on a medical perspective and  
5 what he thought. It's not necessarily  
6 reflecting my religious belief. That was  
7 what he thought in regards to from a medical  
8 standpoint.

9 DR. BARONE: Right. My comment is so  
10 you -- after you've delivered you're not  
11 planning on receiving the vaccine based on  
12 your religious --

13 DR. D'CUNHA: Based on my religious  
14 beliefs. Correct.

15 DR. BARONE: Even if they say, you  
16 know, a reason for subsequent employment?

17 DR. D'CUNHA: Could you repeat the  
18 last sentence?

19 DR. BARONE: I guess potentially after  
20 you deliver, if the medical exemption goes  
21 away --

22 DR. D'CUNHA: Right.

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1 DR. BARONE: -- and someone offered  
2 you a job but you needed the vaccine, you  
3 would not get the vaccine in order to be  
4 employed?

5 DR. D'CUNHA: Correct. If there was  
6 an ethical alternative, I would take that  
7 into consideration. As of now all four  
8 vaccines that are available have used  
9 aborted babies in terms of the production or  
10 in terms of testing. So at this time; no, I  
11 would not.

12 DR. BARONE: So I would assume that  
13 although you filed both a medical and a  
14 religious exemption, I don't know if this is  
15 the right word, but the religious exemption  
16 is the more defining one in your decision  
17 not to get the vaccine based on what you're  
18 telling me now?

19 DR. D'CUNHA: I think I would have  
20 liked both to be taken into consideration,  
21 because at this point in time they have  
22 halted my training in October whereas if the

1           company had considered my medical exemption  
2           I would have been almost through with my  
3           second year of training. Now one-third of  
4           the way, or less than one-third of the way  
5           through my second year they are holding my  
6           training, holding my health insurance,  
7           holding my income. My daughter was a  
8           dependent on my health insurance, and that  
9           was taken away from her as well. So a lot  
10          has been taken away from me in this process.

11           DR. BARONE: I understand the medical  
12          exemption would have helped continue your  
13          benefits until that time.

14           DR. D'CUNHA: My benefits, my  
15          training. I mean we've all been through  
16          this process. We put in years of not just  
17          sacrifice and time and income and all sorts  
18          of things, but there's hard work put into it  
19          too. Why would anybody want their training  
20          to be halted midway through?

21           DR. BARONE: I appreciate that.

22           I think some of the committee members

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1           were trying to ask questions. I'll be quiet  
2           and let you guys go.

3           DR. SOTTILE: Candice, I just want the  
4           committee to understand that you have an  
5           understanding that your career may be  
6           terminated if you fail to get vaccinated in  
7           the future. I just want the committee to  
8           understand that you do understand that if  
9           you decide not to be vaccinated, your whole  
10          career may be terminated. You do understand  
11          that?

12          DR. D'CUNHA: I understand to the  
13          extent that as of right now there is no  
14          accommodation for someone's religious  
15          exemption being made. So if a religious  
16          exemption was to be accepted, because that  
17          conversation has been changing on a weekly,  
18          monthly basis. To that effect, if that  
19          decision was to change once again in the  
20          court system, then anybody who was  
21          terminated for a religious exemption not  
22          being accepted should be reconsidered again.



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1 DR. ZWEIFLER: About supporting  
2 documentation from a religious leader, I am  
3 not sure if I'm misinformed but my  
4 understanding was that the head of the Roman  
5 Catholic religion did not support that  
6 position.

7 DR. D'CUNHA: Yes. So the pope is not  
8 infallible. He can make an opinion but he  
9 is not infallible. Every person, every  
10 Catholic, every practicing Catholic, we are  
11 part of the Catechism of the church. The  
12 pope can have an opinion, and I do respect  
13 the pope for his opinion, but he is not  
14 infallible. I think that's something one  
15 has to take into consideration. This was an  
16 opinion on a medical matter, not a faith  
17 matter. That has to be taken into  
18 consideration. That's part of our Catechism  
19 as well.

20 DR. ZWEIFLER: Was there an  
21 alternative religious support for this  
22 position?

1 DR. D'CUNHA: There has been a split  
2 within the Catholic church on the opinion  
3 regarding the vaccination because there is  
4 the matter of the aborted babies being used  
5 and continuing to be used in the production  
6 or testing of the vaccine. Until an ethical  
7 form of testing and production is taken into  
8 consideration, this vaccine is not going to  
9 be fully accepted by everybody in the  
10 Catholic church. I think when an ethical  
11 alternative comes into play, then we can  
12 talk some more. Until then, the court has  
13 -- the court should rule to allow people to  
14 have a religious belief, because if we don't  
15 have our religious beliefs than where is our  
16 freedom to believe in what we believe in?

17 DR. BARONE: Dr. El-Sayegh, do you  
18 have any last questions for Dr. D'Cunha?

19 DR. EL-SAYEGH: I'm okay. Thank you.

20 DR. BARONE: If there's no objection,  
21 I'm going to -- don't close out, Gus. I may  
22 want to have the committee members stay on.

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1           If I have no objection, I'm going to adjourn  
2           the meeting. Any objection? Dr. D'Cunha?

3           DR. D'CUNHA: No.

4           DR. BARONE: Dr. Sottile?

5           DR. SOTTILE: No.

6           DR. BARONE: All right. So Michelle,  
7           you can have the meeting as brought to a  
8           close.

9  
10           (Whereupon, the proceedings were  
11           concluded at 10:40 a.m.)

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

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1

2

C E R T I F I C A T I O N

3

4

5

I, MICHELLE CONERO, a Notary Public

6

for and within the State of New York, do hereby

7

certify:

8

That hereinbefore set forth is a true

9

record of the proceedings.

10

I further certify that I am not

11

related to any of the parties to this proceeding

12

by blood or by marriage and that I am in no way

13

interested in the outcome of this matter.

14

IN WITNESS WHEREOF, I have hereunto

15

set my hand this 1st day of December 2021.

16

17

18

19

20

  
MICHELLE CONERO

21

22

**EXHIBIT K**





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New Hyde Park, NY 11040  
Phone: (718) 470-3204

Stephen R. Barone, MD, FAAP  
Vice Chairman for Education  
Program Director  
Cohen Children's Medical Center  
Associate Professor of Pediatrics  
Zucker Northwell School of Medicine

### **REPORT OF THE ADVERSE ACTION REVIEW COMMITTEE**

**TO:** John Sottile, M.D.  
Candice D'Cunha, D.P.M.

**FROM:** Adverse Action Review Committee

**DATE:** December 23, 2021

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#### **Committee Members:**

Stephen Barone, M.D., Program Director, Pediatric Residency Program, Cohen's Children's Medical Center (Chair)  
Suzanne El-Sayegh, M.D., Associate Chair of Medicine and Program Director, Internal Medicine Residency Program, Staten Island University Hospital  
Rebecca Zweifler, M.D., PGY-3, Internal Medicine Residency Program, Lenox Hill Hospital

Pursuant to Northwell Health's Office of Academic Affairs ("OAA") Policy #7, Due Process For Adverse Actions Taken Against Residents/Fellows, Section III 5(c), this Adverse Action Review Committee ("Committee") was appointed to provide Candice D'Cunha, D.P.M. ("Dr. D'Cunha") with a review of the October 5, 2021 termination decision ("Adverse Action") of the Staten Island University Hospital Podiatric Medicine and Surgery Residency Program ("Program").

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**CONFIDENTIAL AND PRIVILEGED PEER REVIEW REPORT PURSUANT TO  
NEW YORK PUBLIC HEALTH LAW § 2805 AND EDUCATION LAW § 6527**

The Committee held its review meeting on November 22, 2021. Because Dr. D'Cunha elected to proceed without being represented by an attorney, pursuant to OAA Policy #7A, neither the Program nor Committee had an attorney present at the review. The meeting was transcribed by a stenographer, and a copy of the transcript was provided to the Committee, to the Program, and to Dr. D'Cunha.

The Committee heard testimony from John Sottile, M.D., Program Director of the SIUH Podiatric Residency Program, from William Lowe, M.D., Medical Director of Northwell Health's Employee Health Service, from Vicki Kahaner, Vice President of Northwell Health Employee Relations, and from Dr. D'Cunha.

Documents accepted into evidence consisted of exhibits submitted by the Hospital, numbers 1-15; described in detail below. In addition, the Program provided the Committee with CDC guidelines concerning vaccination of pregnant persons, which the Committee will deem Program Exhibit 16. Dr. D'Cunha also provided the Committee with exhibits, also described below.

### **THE PROGRAM'S EXHIBITS**

Exhibit 1: A copy of 10 N.Y.C.R.R. §2.61, which is the New York State regulation that requires healthcare worker to be vaccinated against COVID-19. §2.61, effective August 26, 2021 provides, in relevant part:

- (a)(1) Covered entities...include (i) any facility or institution included in the definition of hospital in section 2801 of the Public Health Law...
- (2) Personnel...shall mean all persons employed or affiliated with a covered entity...including students...who engage in activities such that if they were infected with COVID-19 they could potentially expose other covered personnel, patients or residents to the disease.

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**CONFIDENTIAL AND PRIVILEGED PEER REVIEW REPORT PURSUANT TO  
NEW YORK PUBLIC HEALTH LAW § 2805 AND EDUCATION LAW § 6527**

- (c) Covered entities shall continually require persons to be fully vaccinated against COVID-19 with the first dose by September 27, 2021 for general hospitals...absent receipt of an exemption...
- (d)(1) Medical exemption...If any licensed physician...certifies that immunization with COVID-19 vaccine is detrimental to the health...based on a pre-existing health condition, [the vaccine requirement] shall be inapplicable only until such immunization is found no longer to be detrimental to such [person's] health.

- Exhibit 2: Northwell Health's Human Resources Policy and Procedure Manual, Part 10, Section 1. At page 5, it provides that all team members must be vaccinated against COVID-19, and that failure to do so may result in termination of privileges/employment/relationship with Northwell.
- Exhibit 3: Dr. D'Cunha's September 9, 2021 request for a medical exemption from the vaccine requirement based on her pregnancy and natural immunity.
- Exhibit 4: September 20, 2021 letter to Dr. D'Cunha advising that her request for a medical exemption is denied; and September 29, 2021 letter to Dr. D'Cunha advising that after re-submission, her request for a medical exemption is still denied.
- Exhibit 5: A series of eight emails from Northwell Health to all employees advising them of the vaccine mandate.
- Exhibit 6: Dr. D'Cunha's request for a religious exemption, dated September 3, 2021. Dr. D'Cunha states that as a Roman Catholic, she is opposed to taking a vaccine developed using aborted fetal cells.
- Exhibit 7: October 1, 2021 letter to Dr. D'Cunha advising that her religious exemption request is denied.
- Exhibit 8: Dr. D'Cunha's PGY-2 contract.
- Exhibit 9: OAA Resident/Fellow Manual.
- Exhibit 10: Northwell Health Code of Ethical Conduct.
- Exhibit 11: October 5, 2021 letter to Dr. D'Cunha advising that in the absence of vaccination, her employment as a resident in the Program will be terminated effective October 7, 2021.
- Exhibit 12: October 7, 2021 letter to Dr. D'Cunha advising that her participation in the Program is terminated and she has a right to request a review.
- Exhibit 13: Acknowledgment of receipt of notice of termination, signed by Dr. D'Cunha and dated October 8, 2021.

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**CONFIDENTIAL AND PRIVILEGED PEER REVIEW REPORT PURSUANT TO  
NEW YORK PUBLIC HEALTH LAW § 2805 AND EDUCATION LAW § 6527**

Exhibit 14: October 11, 2021 email from Dr. D'Cunha stating the following reasons for her request for a review:

1. There is no rational basis to terminate her for refusing the COVID-19 vaccine while she is pregnant, as a) the safety of the vaccine for pregnant women is not established; b) studies indicate cause for concern; and c) she has natural immunity.
2. Her termination violates the Pregnancy Discrimination Act.
3. Her termination violates the Civil Rights Act of 1964.
4. Termination based solely on vaccination status is inconsistent with due process.

Exhibit 15: November 4, 2021 letter to Dr. D'Cunha notifying her that the review will take place on November 22, 2021, identifying the review committee members, and providing copies of OAA Policies #7 and 7A.

Exhibit 16: CDC Guidelines, last updated November 19, 2021, regarding vaccination of pregnant persons against COVID-19. The CDC Guidelines provide in relevant part:

**Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Approved or Authorized in the United States**

COVID-19 vaccination is recommended for everyone aged 5 years and older in the United States for the prevention of coronavirus disease 2019 (COVID-19)...

COVID-19 vaccination is recommended for people who are pregnant, lactating, trying to get pregnant now, or who might become pregnant in the near future...

There is no evidence that any of the COVID-19 vaccines affect current or future fertility...

A growing body of evidence on the safety and effectiveness of COVID-19 vaccination—in both animal and human studies—indicates that the benefits of vaccination outweigh any known or potential risks of COVID-19 vaccination during pregnancy...

COVID-19 vaccination is recommended for all people who are pregnant. A conversation between the patient and their clinical team may assist with decisions about the use of a COVID-19 vaccine; however, approval by a healthcare professional is not required before vaccination.

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**CONFIDENTIAL AND PRIVILEGED PEER REVIEW REPORT PURSUANT TO  
NEW YORK PUBLIC HEALTH LAW § 2805 AND EDUCATION LAW § 6527**

### **DR. D'CUNHA'S EXHIBITS**

After the review meeting, Dr. D'Cunha provided the OAA with the following, which we made available to and reviewed by the Committee:

1. September 2, 201 letter from Christopher LaPorta, M.D., advising that Dr. D'Cunha is under his care for her current pregnancy. The letter states that her current COVID antibodies on August 3, 2021 are greater than 250, and further states "Request delaying vaccine administration to after delivery."
2. A copy of Dr. D'Cunha's COVID-19 Antibody test result dated August 4, 2021.
3. Letter from Dr. D'Cunha to Employee Health Service requesting reconsideration of its denial of her request for a medical exemption.
4. A December 14, 2020 statement by the Academy of Breastfeeding Medicine.
5. Undated vaccine data report that appears to be from "MotherToBaby" regarding observational studies.
6. November 5, 2021 letter from the CDC to Elizabeth Brehm, Esq., regarding a Freedom of Information Act request.
7. A printed copy of Dr. D'Cunha's opening statement.

### **STANDARD OF REVIEW**

Pursuant to OAA Policy #7A, Adverse Action Review and Appeal Rules and Regulations, Section II A(4) (Binder, Tab 9), to reverse the Adverse Action, the Trainee shall have the burden to persuade the Committee that the Trainee failed to receive notice of his/her deficiencies in the ACGME Core Competencies and a reasonable opportunity to remedy same; or that the Adverse Action lacks any factual basis or is not in compliance with ACGME, AOA, CODA, CPME or Northwell policies, including those contained in the house staff manual.

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**CONFIDENTIAL AND PRIVILEGED PEER REVIEW REPORT PURSUANT TO  
NEW YORK PUBLIC HEALTH LAW § 2805 AND EDUCATION LAW § 6527**



## **SUMMARY OF EVIDENCE PRESENTED**

### **The Program's Evidence**

The Program first witness was Dr. Sottile. He testified to the following in his opening statement: Dr. D'Cunha started her PGY-1 year in June, 2020. During the summer of 2021, the State issued a vaccine mandate for all health care workers, requiring vaccination by September 27, 2021. Northwell adopted a similar policy.

Dr. D'Cunha chose not to be vaccinated. Dr. Sottile discussed it with her several times but she did not change her decision, and accordingly was terminated on October 7, 2021. (T. 12-14).

Next, Dr. D'Cunha provided an opening statement, which consisted of the reasons for her appeal, as set forth in Program Exhibit 14, which is her October 11, 2021 email described above. Dr. D'Cunha then read a statement that analogized the vaccine mandate to forced medical treatment and medical research without informed consent eugenics, Nazism, and coercion. (T. 16-25).

Dr. Sottile then testified, and reviewed the Program's time-line and exhibits as described above. (T. 26-32).

Dr. Lowe then testified to the following: He is the Medical Director of Northwell Health, Employee Health Service, and has served in that capacity for 10 years. (T. 33). His office reviewed all requests for medical exemptions.

A Clinical Advisory Group ("CAG") was established, a high level senior clinical leadership group to address COVID-19 issues. The CAG asked Dr. Lowe to form a committee

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**CONFIDENTIAL AND PRIVILEGED PEER REVIEW REPORT PURSUANT TO  
NEW YORK PUBLIC HEALTH LAW § 2805 AND EDUCATION LAW § 6527**

to review all medical exemption requests: He did so and the committee was approved by the CAG. (T. 35).

Northwell was in process of preparing its own vaccine mandate but the state pre-empted that. (T. 36).

Northwell's Employee Health Services policy regarding vaccines is that vaccination or proof of natural immunity is okay for measles, mumps and rubella, but not for COVID, for which actual vaccine is required. (T. 39-40).

Dr. Lowe's committee reviewed Dr. D'Cunha's medical exemption request, and noted that it was not supported by a physician note stating that the COVID-19 vaccine would be harmful to her.

CDC Guidelines recommend COVID-19 vaccine for all people. Dr. Lowe's committee decided to follow the CDC Guidelines, (T. 44). It also looked at guidelines from the American College Obstetricians and Gynecologists ("ACOG").

"The committee decided that pregnancy, without some other medical thing that would make us question it, in and of itself was not a contraindication, and...was supported by CDC, ACOG [and] our clinical leadership." (T. 52). Accordingly, all requests for deferred vaccine based on pregnancy or prior immunity were declined. (T. 54).

Regarding articles provided by Dr. D'Cunha, Dr. Lowe testified that if you go to the internet to look for a reason to not get vaccinated, you could find it. There is a lot of

misinformation out there. Dr. Lowe's committee felt that its decisions should be based on established guidelines by well recognized and respected professional entities. (T. 59).

The Committee then heard testimony from Vicki Kahaner, the Vice President of Employee Relations at Northwell Health. (T. 62). Northwell's Advice & Counsel Center handled all religious accommodation requests.

Ms. Kahaner then reviewed eight emails sent to all Northwell Health employees from August 2 – October 4, informing and advising them regarding the vaccine mandate. (Program Exhibit 5).

All requests for religious accommodation were considered. If the request was from an employee who was patient facing, it was denied as an undue hardship to Northwell.

Dr. D'Cunha, when asked by the Committee, testified that she would not get vaccinated even if not pregnant, due to her religious beliefs. (T. 86-88).

### **COMMITTEE FINDINGS**

The committee was unanimous in their decision that Dr. D'Cunha did not meet her burden to have the adverse action reversed. This was based on the committee's determination that she received proper notification and due process throughout the timeline that led to her ultimate termination.

The reasons for the committee's decision are outlined below:

1. Dr. D'Cunha asserts that her termination based solely on the vaccine mandate violates various laws and her due process rights. The Committee is advised by counsel that

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**CONFIDENTIAL AND PRIVILEGED PEER REVIEW REPORT PURSUANT TO  
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multiple legal challenges to the mandate have been rejected by the courts, including the U.S. Supreme Court, which on December 13, 2021 denied an emergency request to block the mandate. It is not the role of this Committee to review and decide the legality of a State healthcare regulation. Because the regulation does not permit religious exemptions (as distinct from accommodations, discussed below), the denial of Dr. D'Cunha's request for a religious exemption was appropriate.

2. Northwell's policy that mandates the necessity of a COVID vaccine to maintain employment was provided to and discussed with D'Cunha on multiple occasions. She declined all opportunities to receive the vaccine and comply.
3. The process Dr. Lowe described that led Northwell to decline Dr. D'Cunha's request for a medical exemption was deemed appropriate and was not applied to Dr. D'Cunha in a capricious manner. The Committee does not feel it is in their purview to challenge the medical expertise of the Northwell's Clinical Advisory Group regarding the safety and benefits of the COVID vaccine in pregnancy. The Committee feels that the CAG decision to follow guidance from the CDC and ACOG was reasonable and appropriate. Despite that view, the Committee did take the time to review the exhibits provided by Dr. D'Cunha and did not feel they were persuasive in view of CDC and ACOG guidance. There is wealth of information which describes breakthrough COVID disease in previously infected individuals and therefore the potential to spread the disease to others, including patients. The Committee also notes that Dr. D'Cunha's medical exemption request was not supported by a note from a licensed physician certifying in that the

COVID-19 vaccine would be detrimental to her health; thus the request did not meet the medical exemption requirement of §2.61.

4. The process Ms. Vicki Kahaner described that led Northwell to decline Dr. D'Cunha's request for a religious accommodation was deemed appropriate and was not applied to Dr. D'Cunha in a capricious manner. The Committee is advised by counsel that employers may grant a religious accommodation (not an exemption) so long as the employee does not interact with patients, and may be denied if it would be an undue hardship. The Committee accepts Ms. Kahaner's testimony that it would be an undue hardship to grant a religious accommodation to Dr. D'Cunha.
5. The Committee would like to note that its decision to affirm the decision to terminate Dr. D'Cunha was not based on performance issues, but rather her decision to not follow a Northwell policy and New York State regulation which requires vaccination for continued employment.



**CONCLUSION**

For the above reasons, the Committee votes unanimously to uphold the Dr. D'Cunha's termination from the Program.

Dated: December 23, 2021

A handwritten signature in black ink, appearing to be 'S. Barone', written over a horizontal line.

By: Stephen Barone, M.D.  
Committee Chair

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**CONFIDENTIAL AND PRIVILEGED PEER REVIEW REPORT PURSUANT TO  
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**EXHIBIT L**



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**New York District Office**

33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004-2112  
For General Information: (800) 669-4000  
District Office: (212) 336-3620  
General FAX: (212) 336-3625

**Candice D'Cunha**  
**236 Graves St.**  
**Staten Island, NY 10314**

**Re: EEOC Charge No.520-2022-00721**  
**Candice D'Cunha v. Staten Island University Hospital/Northwell Health**

**Dear Dr. D'Cunha:**

This office is in receipt of your request for a *Notice of Right to Sue* on the above-referenced charge.

Ordinarily, a charging party or his/her counsel is not entitled to receive a *Notice of Right to Sue* upon request until the charge has been pending with the EEOC for at least 180 days. However, an early *Notice of Right to Sue* is authorized by 29 C.F.R. § 1601.28(a)(2) if the Director determines that the Commission will not be able to complete its administrative process within 180 days of the date the charge was filed.

We have reviewed all of the circumstances of this case and have determined that issuing you the requested *Notice of Right to Sue* is warranted at this time. Specifically, given our office's current workload, we have concluded that the EEOC will be unable to complete the processing of this charge within 180 days of the date the charge was filed.

Enclosed is your *Notice of Right to Sue*. If you have any questions, please contact Investigator Glendora Young at (929) 506-5290.

**On Behalf of the Commission**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Judy Keenan**  
**Director**

**Enc.**

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)**

To: **Candice D'cunha**  
**236 Graves St**  
**Staten Island, NY 10314**

From: **New York District Office**  
**33 Whitehall Street**  
**5th Floor**  
**New York, NY 10004**

☐

On behalf of person(s) aggrieved whose identity is  
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

**520-2022-00721**

**Glendora M. Young,**  
**Investigator**

**(929) 506-5290**

(See also the additional information enclosed with this form.)

**NOTICE TO THE PERSON AGGRIEVED:**

**Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA):** This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☐

More than 180 days have passed since the filing of this charge.

☒

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒

The EEOC is terminating its processing of this charge.

☐

The EEOC will continue to process this charge.

**Age Discrimination in Employment Act (ADEA):** You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

☐

The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.

☐

The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

**Equal Pay Act (EPA):** You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosures(s)

For

**Judy A. Keenan,**  
**District Director**

(Date Issued)

CC:

**Lorin Weiner**  
**Director of Human Resources**  
**STATEN ISLAND UNIVERSITY HOSPITAL/ NORTHWELL**  
**HEALTH**  
**475 Seaview Ave**  
**Staten Island, NY 10305**

**INFORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.  
If you also plan to sue claiming violations of State law, please be aware that time limits and other  
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),  
the Genetic Information Nondiscrimination Act (GINA), or the Age  
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope or record of receipt, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was issued to you** (as indicated where the Notice is signed) or the date of the postmark or record of receipt, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

**PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):**

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

**ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:**

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

**ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:**

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

***IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.***



Enclosures(s)

cc:

**NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA):** The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

**If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).**

**“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):**

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one** major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of “mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it **would be substantially limiting when active**.
- An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months**.

**“Regarded as” coverage:**

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **BOTH** transitory (lasting or expected to last six months or less) **AND** minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the “regarded as” definition of “disability.”

***Note:*** *Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.* For more information, consult the amended regulations and appendix, as well as explanatory publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).